

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4           -----                   )  
5   IN RE: NATIONAL                   ) MDL No. 2804  
6   PRESCRIPTION OPIATE                   )  
7   LITIGATION                   ) Case No.  
8   -----                   ) 1:17-MD-2804  
9                   )  
10   THIS DOCUMENT RELATES TO                   ) Hon. Dan A. Polster  
11   ALL CASES                   )  
12   -----                   )

13                   HIGHLY CONFIDENTIAL  
14                   SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

15                   VIDEOTAPED DEPOSITION OF  
16                   MARK NICASTRO  
17                   December 6, 2018

18                   Indianapolis, Indiana

19  
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21  
22                   GOLKOW LITIGATION SERVICES  
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The videotaped deposition of MARK NICASTRO,  
called by the Plaintiffs for examination, taken  
pursuant to the Federal Rules of Civil Procedure of  
the United States District Courts pertaining to the  
taking of depositions, taken before CORINNE T.  
MARUT, C.S.R. No. 84-1968, Registered Professional  
Reporter and a Certified Shorthand Reporter of the  
State of Illinois, 251 East Ohio Street,  
Indianapolis, Indiana on December 6, 2018,  
commencing at 9:04 a.m.

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REPORTED BY: CORINNE T. MARUT, C.S.R. No. 84-1968  
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7	CVS-NICASTRO DEPOSITION EXHIBIT	MARKED FOR ID
8	CVS- PowerPoint, Prescription Drug	26
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9	001	
10	CVS- document, "Track One CVS Store	35
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11	002 CVS-MDLT1-000007362 - 000007364	
12	CVS- 9/27/06 letter to CVS Indiana,	38
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13	003 CVS-MDLT1-000010552 - 000010555	
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19	006 Operating Procedures Manual;	
	CVS-MDLT1-000066576 - 000066641	
20		
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21	Nicastro- attachment;	
	007 CVS-MDLT1-000081281 -	
22	000081346	
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1	E X H I B I T S		
2	CVS-NICASTRO	DEPOSITION EXHIBIT	MARKED FOR ID
3	CVS-	8/24/10 e-mail string;	56
4	Nicastro-	CVS-MDLT1-000076281	
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6	CVS-	8/24/10 e-mail string;	58
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17	012	Manual; CVS-MDLT1-000088957 -	
18		000089025	
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21	013		
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29	Nicastro-	CVS-MDLT1-000076353 - 000076389	
30	016		
31	CVS-	10/7/10 e-mail string;	106
32	Nicastro-	CVS-MDLT1-000034172 - 000034177	
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2	CVS-NICASTRO	DEPOSITION EXHIBIT	MARKED FOR ID
3	CVS-	10/12/10 e-mail;	109
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8	020	CVS-MDLT1-000076286 - 000076352	
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21	CVS-	9/27/13 e-mail string;	156
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1	E X H I B I T S		
2	CVS-NICASTRO	DEPOSITION EXHIBIT	MARKED FOR ID
3	CVS-	10/3/13 e-mail string with	158
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4	028	CVS-MDLT1-000022055 - 000022061	
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18	035	000008395	
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20	036		
21	CVS-	11/15/13 e-mail string;	193
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1	E X H I B I T S		
2	CVS-NICASTRO	DEPOSITION EXHIBIT	MARKED FOR ID
3	CVS-	11/19/13 e-mail with	195
	Nicastro-	attachment;	
4	038	CVS-MDLT1-000076142 - 000076145	
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	Nicastro-	CVS-MDLT1-000058093	
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7	CVS-	11/21/13 e-mail with	198
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8	040	CVS-MDLT1-000076136 - 000076141	
9	CVS-	11/21/13 e-mail;	201
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10	041		
11	CVS-	11/21/13 e-mail with	203
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12	042	CVS-MDLT1-000000409 - 000000420	
13	CVS-	11/25/13 e-mail string;	206
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16	044		
17	CVS-	Graph, "Annual CVS Hydrocodone	219
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19	CVS-	5/15/14 e-mail;	227
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21	CVS-	3/5/14 e-mail string with	242
22	Nicastro-	attachment; and	
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1	E X H I B I T S		
2	CVS-NICASTRO	DEPOSITION EXHIBIT	MARKED FOR ID
3	CVS-	1/20/14 e-mail string;	253
	Nicastro-	CVS-MDLT1-000076153 - 000076154	
4	048		
5	CVS-	Declaration of Joseph	258
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10	051		
11	CVS-	8/22/14 e-mail string;	280
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13	CVS-	12/31/15 letter from U.S. DOJ	287
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14	053	CVS-MDLT1-000008014 - 000008015	
15	CVS-	8/9/13 e-mail string;	321
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16	216		
17	CVS-	8/6/13 e-mail string;	317
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18	232		
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1 THE VIDEOGRAPHER: We are now on the record.  
2 My name is Michael Newell. I'm a videographer for  
3 Golkow Litigation Services.

4 Today's date is December 6, 2018. The  
5 time is 9:04 a.m.

6 This deposition is being held in  
7 Indianapolis, Indiana, in the matter of National  
8 Prescription Opiate Litigation.

9 The deponent today is Mark Nicastro.

10 Will counsel please identify themselves.

11 MR. ELSNER: My name is Michael Elsner from  
12 the law firm of Motley Rice on behalf of  
13 Plaintiffs, and with me today from my office is  
14 Kaitlyn Eekhoff and Megan Neubert.

15 MR. DeROCHE: James DeRoche, of counsel,  
16 Weisman Kennedy & Berris, for the Plaintiffs.

17 MR. BUSHUR: Joseph Bushur of  
18 Williams & Connolly on behalf of Cardinal Health.

19 MR. HYNES: Paul Hynes of Zuckerman Spaeder on  
20 behalf of CVS Indiana, LLC, CVS RX Services, Inc.  
21 and the witness, Mark Nicastro.

22 THE REPORTER: Counsel on the phone.

23 MR. BULLERMAN: This is Michael Bullerman of  
24 Arnold & Porter on behalf of the Endo and Par

1 Defendants.

2 MR. LADD: This is Matthew Ladd from Morgan  
3 Lewis on behalf of Defendant Rite Aid.

4 MR. LANOSA: This is Michael Lanosa from  
5 Covington & Burling on behalf of McKesson.

6 MS. PIERCE: This is Abigail Pierce from Reed  
7 Smith on behalf of AmerisourceBergen Drug  
8 Corporation.

9 MR. CARTER: Ed Carter from Jones Day on  
10 behalf of Wal-Mart.

11 THE VIDEOGRAPHER: The Court Reporter today is  
12 Corinne Marut and will now swear in the witness.

13 (WHEREUPON, the witness was duly  
14 sworn.)

15 MARK NICASTRO,  
16 called as a witness herein, having been first duly  
17 sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. ELSNER:

20 Q. Good morning.

21 A. Good morning.

22 Q. My name is Michael Elsner and I  
23 represent the Plaintiffs.

24 Could you tell us your name, sir.

1 A. It's Mark Nicastro.

2 Q. And where do you live?

3 A. I live in Carmel, Indiana.

4 Q. And how old are you?

5 A. 53.

6 Q. And I saw that you graduated from

7 Bowling Green University, is that right?

8 A. I did.

9 Q. And did you graduate with a degree?

10 A. I did.

11 Q. What was your degree in?

12 A. General business. BSBA in general  
13 business.

14 Q. In what year was that?

15 A. 1987.

16 Q. Okay. And before working for CVS you  
17 were working with Best Buy, is that right?

18 A. That's correct.

19 Q. And what were you doing for Best Buy?

20 A. I was an operations manager for a  
21 distribution center.

22 Q. For how long did you do that?

23 A. Approximately three years.

24 Q. And what years were those?

1 A. 1995 to 1998.

2 Q. After leaving Best Buy where did you go  
3 to work after that?

4 A. For CVS.

5 Q. When you say "CVS," who hired you  
6 exactly?

7 A. The person that hired me or the company?

8 Q. The company.

9 A. I believe it was CVS Pharmacy.

10 Q. Okay.

11 A. Because I went to work in Somerset,  
12 Pennsylvania.

13 Q. Okay. And what did you do in Somerset,  
14 Pennsylvania?

15 A. I was the director of operations for  
16 that DC.

17 Q. And by "DC" you mean distribution  
18 center?

19 A. Distribution center.

20 Q. Okay. And how long did you -- were you  
21 in Somerset, Pennsylvania?

22 A. Almost ten years to the date.

23 Q. Okay. And what were the dates?

24 A. August '98 to around August of --

1       probably about September of 2008.

2               Q.       September of 2008?

3               A.       Yes.   Ten years.

4               Q.       Okay.   And what were your  
5       responsibilities in Somerset, Pennsylvania?

6               A.       Oversee the operation for distributing  
7       products to CVS stores.

8               Q.       And what were -- what was the geographic  
9       region of that distribution center in Somerset,  
10      Pennsylvania?

11              A.       We covered West Virginia, New York,  
12      Pennsylvania, Ohio, a little bit of Maryland.

13              Q.       And did there come a time when you moved  
14      to Indianapolis?

15              A.       Yes.

16              Q.       And when was that?

17              A.       That was in 2008.

18              Q.       And what job did you take in  
19      Indianapolis?

20              A.       Director of operations.

21              Q.       Okay.   And were you hired by  
22      CVS Pharmacy at the time in 2008?

23              A.       To me it was all the same, just moving  
24      from CVS to CVS, but I know the title of our

1 building is different. It's CVS Indiana, LLC.

2 Q. Okay. But you viewed it all as CVS?

3 A. Yes.

4 Q. And in 2008 what was your position?

5 A. Director of operations.

6 Q. Director of operations. Okay. And

7 that's for the distribution center in Indiana?

8 A. Yes.

9 Q. For CVS?

10 A. Yes.

11 Q. And what was the geographical territory

12 of that operation center in Indiana?

13 A. We had a little bit of Ohio, but most  
14 states went out west and north. So, we had Indiana  
15 of course, Illinois, Missouri, Kansas, Montana,  
16 North Dakota, Minnesota, Wisconsin.

17 Q. A large number?

18 A. Yeah.

19 Q. And in this case we're particularly  
20 interested in Summit County and Cuyahoga County.

21 Were those -- were those CVS stores in those

22 locations, what distribution center provided

23 hydrocodone products and other products to those

24 stores?

1           A.       They would have been serviced through  
2     the Somerset distribution center; but the  
3     hydrocodone, the pharmacy products were distributed  
4     through Indianapolis and cross-docked to Somerset,  
5     and then Somerset delivered to those stores the  
6     pharmacy product.

7           Q.       Okay. And did Somerset, Pennsylvania  
8     ever distribute hydrocodone products?

9           A.       The products would have come from  
10    Indianapolis to Somerset and then -- so, yes, the  
11    control drugs would have been part of that pharmacy  
12    delivery.

13          Q.       Okay. And did you have access to the  
14    Internet at the facility in Somerset, Pennsylvania,  
15    and, if so, in what year?

16          A.       Yes.

17          Q.       Do you remember when?

18          A.       The -- the Internet?

19          Q.       Yes.

20          A.       Have access to the Internet?

21          Q.       At work.

22          A.       I believe the entire time.

23          Q.       The entire time?

24          A.       Yeah.

1 Q. From 1998 till 2008?

2 A. Yes.

3 Q. Okay. As the director of the  
4 Indianapolis distribution center, who do you report  
5 to?

6 A. I report to -- currently I report to Jim  
7 Hall. He is a regional director.

8 Q. For CVS?

9 A. Yes.

10 Q. CVS Pharmacy?

11 A. I believe.

12 Q. When you first joined the Somerset,  
13 Pennsylvania distribution center, were you given  
14 any training on the distribution of controlled  
15 substances in 1998?

16 A. No.

17 Q. When is the first year that you recall  
18 being given training on the distribution of  
19 controlled substances?

20 A. Our process in Somerset was much  
21 different than Indianapolis because we did not  
22 carry any control drugs or any pharmacy products  
23 within the -- within the distribution center.

24 So, the only access or training that I

1     needed around pharmaceuticals is how we handled it  
2     once it came into the building.

3           Q.     But my question was slightly different,  
4     which is: In what year do you first recall  
5     receiving training on the distribution of  
6     controlled substances at CVS?

7           A.     It would depend on what kind of training  
8     we are talking about.

9           Q.     Any training.

10          A.     When I came on site, I would have been  
11     brought up to speed very quickly on how we handle  
12     the drugs as they come through the building. They  
13     are a special color tote. We kept them in a  
14     secured area and then we distribute, loaded them up  
15     with the stores. So, that -- that process and  
16     understanding the importance of it would have been  
17     immediate.

18          Q.     Immediate. And at what point in time do  
19     you first recall receiving any kind of training in  
20     the distribution of controlled substances as it  
21     relates to monitoring for suspicious activities and  
22     those types of programs?

23          A.     I would not have had any of that until I  
24     moved to Indianapolis.

1 Q. And that was in 2008, is that right?

2 A. Correct.

3 Q. Did you receive that training in 2008?

4 A. I had a team that managed that process,  
5 my operations manager, pharmacy manager, pharmacy  
6 supervisor. So, they were -- they managed that  
7 process. I just oversaw that part of the  
8 operation. But I would have -- so I don't recall  
9 exactly when I became familiar with that or  
10 received any type of training, but it would have  
11 been shortly after I arrived.

12 Q. When did the Indianapolis distribution  
13 center open, to your knowledge?

14 A. I don't know.

15 Q. When you joined in 2008, who was  
16 responsible for the pharmacy-related aspects of the  
17 business in Indianapolis?

18 A. Gary Millikan was my operations manager,  
19 and he oversaw the pharmacy.

20 Q. How many people did Gary Millikan have  
21 under him that reported to him?

22 A. I -- I don't remember.

23 Q. I saw some statistics that the  
24 distribution center in Indiana in 2013 had about

1     \$109 million worth of pharmacy inventory. Does  
2     that sound about right to you?

3           A.     I don't know the exact number, but  
4     roughly.

5           Q.     Okay. And also in 2013 I saw some  
6     statistics that the CVS distribution center in  
7     Indiana had shipped about 85 million pieces of  
8     pharmaceutical products.

9                     Does that number sound about right to  
10    you?

11          A.     I -- I'm not -- I don't recall in 2013.  
12    It's been a long time ago.

13          Q.     Does that sound about right in terms of  
14    the volume that the Indiana distribution center  
15    would distribute?

16          A.     I -- I don't remember. I'm sorry.

17          Q.     Do you believe there is an opioid crisis  
18    in the United States?

19                 MR. HYNES: Objection to form.

20    BY THE WITNESS:

21          A.     I believe there is issues with opioids.

22    I see the news and I read the paper and a lot of  
23    discussion about it in the political stage, too.

24    So, I -- I understand there is issues with opioids.

1 BY MR. ELSNER:

2 Q. Okay. And you follow those issues?

3 A. Not closely. Just what I see on TV and  
4 in the paper.

5 Q. What is your understanding of the opioid  
6 crisis in the United States?

7 MR. HYNES: Objection to form.

8 BY THE WITNESS:

9 A. There is -- there is some addiction  
10 issues with opioids.

11 BY MR. ELSNER:

12 Q. And did anyone ever tell you from  
13 CVS Pharmacy or in CVS that there is an opioid  
14 crisis in the United States?

15 A. Not in that manner.

16 Q. Were you aware that the Center for  
17 Disease Control and Prevention had declared  
18 prescription drug abuse to be an epidemic?

19 MR. HYNES: Objection. Time frame.

20 MR. ELSNER: 2010.

21 BY THE WITNESS:

22 A. No.

23 BY MR. ELSNER:

24 Q. Did you know as early as 2007 that

1 approximately 27,000 unintentional overdose deaths  
2 occurred in the United States, which is one in  
3 every 19 minutes?

4 MR. HYNES: Objection; form.

5 BY THE WITNESS:

6 A. No.

7 BY MR. ELSNER:

8 Q. Were you aware that every component of  
9 the distribution chain, it had been determined, had  
10 been breached as a result of the opioid crisis?

11 MR. HYNES: Objection; form.

12 MR. ELSNER: Why don't we show the PowerPoint.  
13 First exhibit is CVS-MDLT1-15502. We will mark  
14 this as Exhibit 1.

15 (WHEREUPON, a certain document was  
16 marked as CVS-Nicastro-001:  
17 PowerPoint, Prescription Drug  
18 Abuse; CVS-MDLT1-15502.)

19 MR. HYNES: Did you say this has a Bates  
20 number on it?

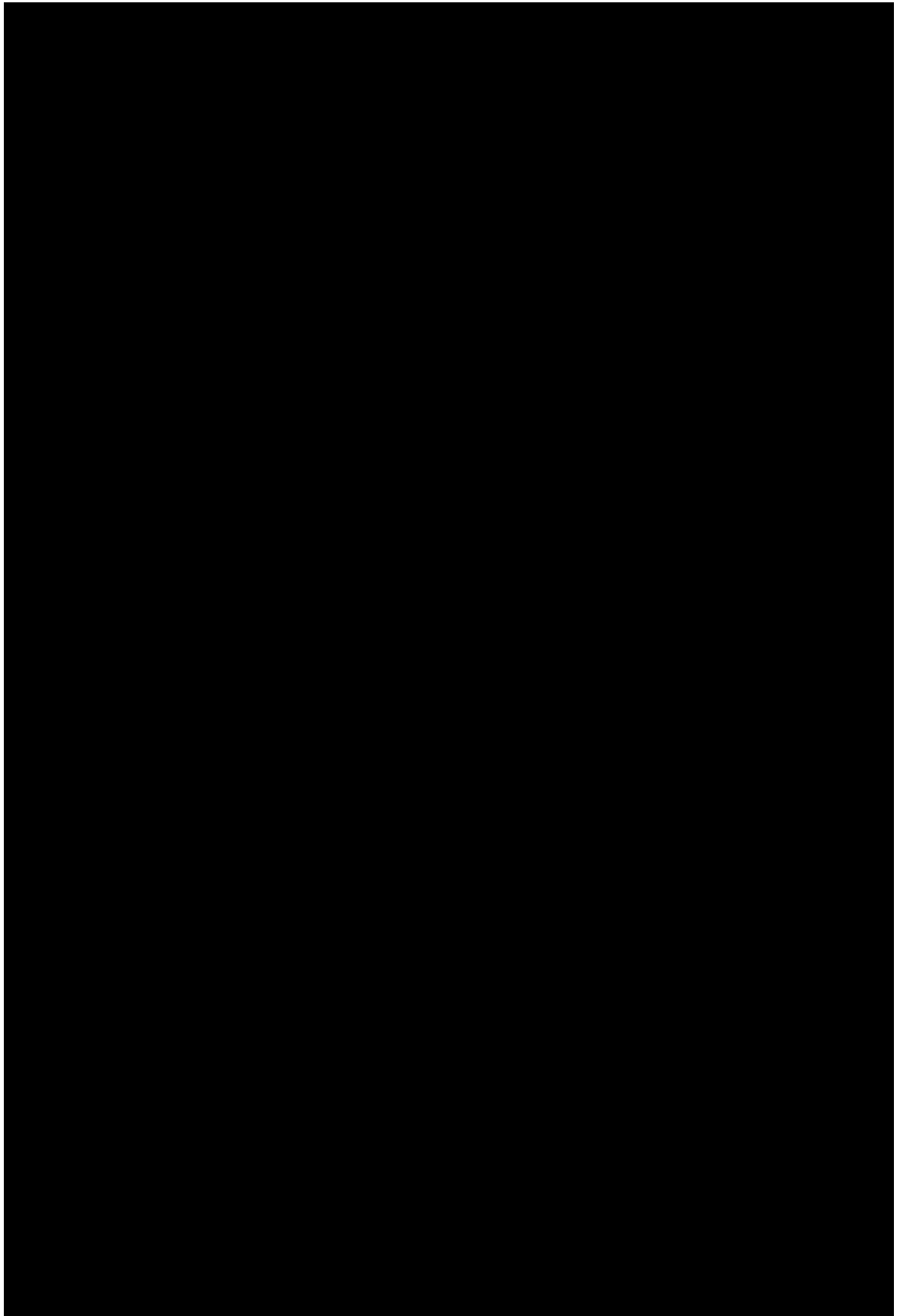
21 MR. ELSNER: It does. Can we see a copy of  
22 the Bates number?

23 MR. HYNES: Could I have this copy? Thank  
24 you. But I appreciate this is easier to read.

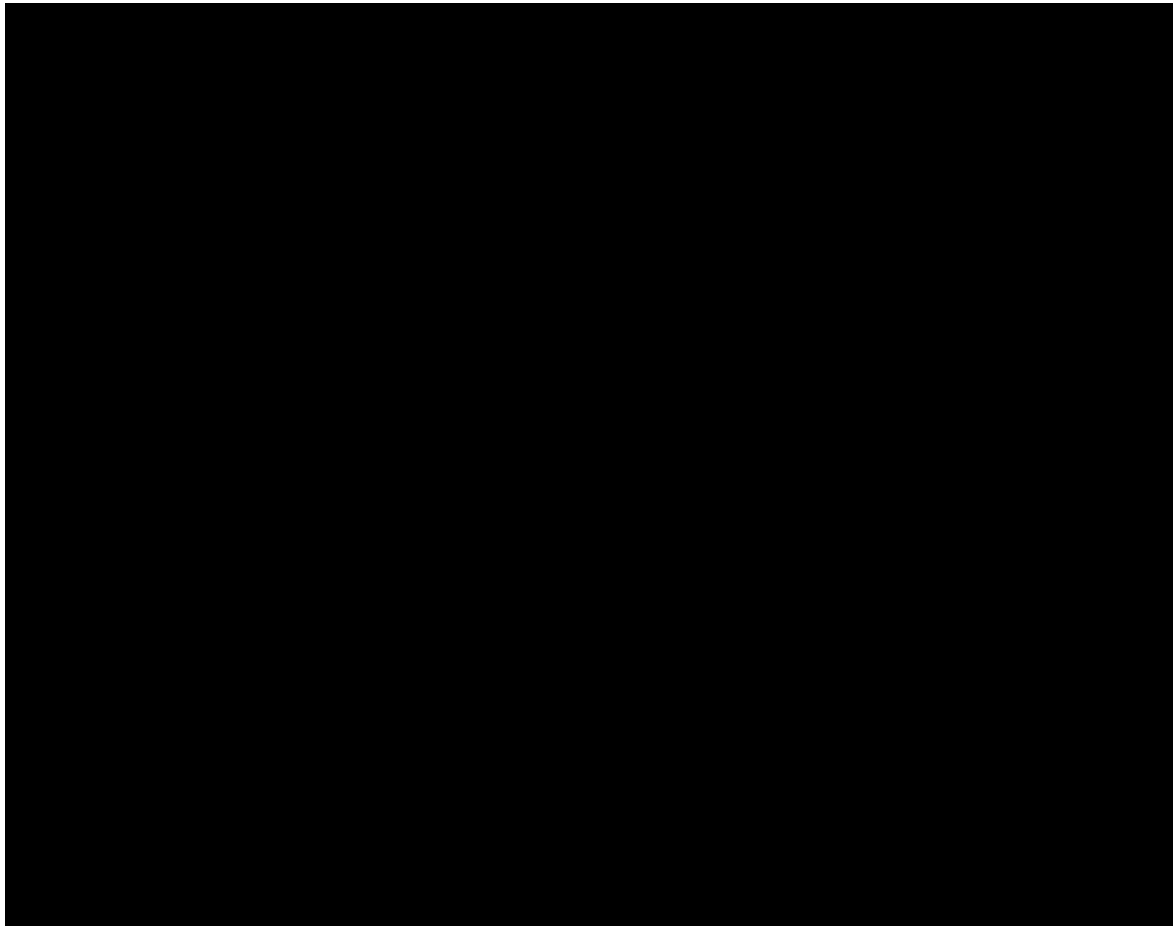
1 MR. ELSNER: Right. And in color.

2 BY MR. ELSNER:

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13 BY MR. ELSNER:

14 Q. Would you agree with me that the  
15 oversupply of opioids leads to diversion?

16 MR. HYNES: Objection to form.

17 BY THE WITNESS:

18 A. Could you repeat that.

19 BY MR. ELSNER:

20 Q. Sure. Would you agree with me that the  
21 oversupply of opioids may lead to diversion?

22 MR. HYNES: Objection to form.

23 BY THE WITNESS:

24 A. The oversupply. I don't really

1 understand the -- are you asking me a specific  
2 question like was I oversupplying drugs to areas  
3 or --

4 BY MR. ELSNER:

5 Q. No, I'm asking you whether you  
6 understood that if there was an oversupply of  
7 opioid drugs that there was a risk that those drugs  
8 might be diverted?

9 MR. HYNES: Objection. Time frame. Now or?

10 BY MR. ELSNER:

11 Q. At any time.

12 A. As long as we had -- as long as there  
13 are controls in place to manage those drugs,  
14 whatever they are, I don't think it would be a  
15 higher risk for diversion.

16 Q. So, even if those numbers were 10,000  
17 pills into a community of a size of 12,000 people,  
18 you wouldn't see that as a risk of diversion so  
19 long as there were some controls in the  
20 distribution center?

21 MR. HYNES: Objection to form.

22 BY THE WITNESS:

23 A. As long as there were controls  
24 throughout the supply chain network and at the --

1 at the pharmacy level, at the store level.

2 I -- I deal with very large numbers  
3 every day. So, we store a lot of inventory. We  
4 move a lot of inventory. But it's still every  
5 piece is managed and controlled. So, I think as  
6 long as you have the proper controls in place, it  
7 should prevent diversion.

8 BY MR. ELSNER:

9 Q. Regardless of volume?

10 MR. HYNES: Objection to form.

11 BY THE WITNESS:

12 A. Regardless of volume.

13 BY MR. ELSNER:

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24 BY MR. ELSNER:

1 Q. Okay. What other states on this chart  
2 were also serviced by your distribution center in  
3 the hydrocodone?

4 A. For hydrocodone?

5 Q. Yes.

6 A. Michigan, Illinois and Indiana.

7 Q. And Ohio?

8 A. And I believe Ohio.

9 Q. Okay. So, were you aware that four of  
10 the top ten states for the dispensing of  
11 hydrocodone were supplied that hydrocodone by CVS?

12 MR. HYNES: Objection to form.

13 BY THE WITNESS:

14 A. I was not.

15 BY MR. ELSNER:

16 Q. Okay. Were you aware that the CVS  
17 Indiana distribution center was the largest  
18 distributor of hydrocodone in Ohio?

19 MR. HYNES: Objection to form.

20 BY MR. ELSNER:

21 Q. From 2006 through 2014, distributing  
22 nearly 287 million dosage units.

23 MR. HYNES: Objection to form.

24 BY THE WITNESS:

1           A.       I was not aware of that.

2       BY MR. ELSNER:

3           Q.       You were not aware that CVS was the  
4       largest distributor of hydrocodone in the entire  
5       state of Ohio?

6           MR. HYNES:   Objection to form.

7       BY THE WITNESS:

8           A.       No.

9       BY MR. ELSNER:

10          Q.       The Indiana distribution center provided  
11       controlled substances to all CVS stores in Summit  
12       and Cuyahoga County, Ohio, is that correct?

13          A.       Correct.

14          Q.       And do you know from what period of time  
15       that distribution took place?

16          A.       I -- I don't know the beginning dates.  
17       No, I don't.

18          Q.       Okay.   But the Indianapolis distribution  
19       center was distributing hydrocodone combination  
20       products to CVS stores in Summit County and  
21       Cuyahoga County in 2008 when you arrived, is that  
22       right?

23          A.       Yes.

24          Q.       And they did so through 2014, is that

1 right, for hydrocodone combination products?

2 A. I -- I'm not sure of the date, but we  
3 did move that operation where Somerset was serviced  
4 from another facility, and that's when we no longer  
5 serviced that area. So, if it was -- if we have  
6 numbers that are 2014, then, yes, it would be 2014.

7 Q. So, from -- do you know prior to 2008  
8 who was providing opioid products, distributing  
9 opioid products to CVS stores in Summit County and  
10 Cuyahoga County, Ohio?

11 MR. HYNES: Objection to form.

12 BY MR. ELSNER:

13 Q. You can answer if you know.

14 A. Okay. Yes, the Indianapolis  
15 distribution center. Was there a begin date? I  
16 know the time that I was in Somerset, from '98 to  
17 2008, Indianapolis was providing us with the  
18 pharmacy which we were delivering to Ohio.

19 Q. Okay. So, if I understand that  
20 correctly, from 1998 to 2008, when you were in  
21 Somerset, Pennsylvania, the Indianapolis  
22 distribution center would ship the controlled  
23 substances for distribution in Ohio to Somerset,  
24 Pennsylvania, is that right?

1 A. That's correct.

2 Q. And then in Somerset, Pennsylvania, you  
3 would then ship those products to the stores in  
4 Ohio, is that right?

5 A. Correct.

6 Q. And did that change when you moved to  
7 Indianapolis in 2008 or is that -- or did that  
8 process continue where the Indianapolis  
9 distribution center would send it to Somerset and  
10 then Somerset would ship it to the stores?

11 A. That process remained in place.

12 Q. Remained in place. Did it remain in  
13 place for controlled substances and hydrocodone  
14 products through 2014 before hydrocodone was  
15 rescheduled?

16 MR. HYNES: Hydrocodone combination products?

17 MR. ELSNER: Yes.

18 BY THE WITNESS:

19 A. No. I believe -- I believe we ended the  
20 Somerset, delivering to Somerset before we  
21 eliminated hydrocodone from our inventory. And I'm  
22 just thinking here. I think it was around 2012  
23 that we stopped shipping to Somerset.

24 BY MR. ELSNER:

1 Q. Okay. And so from 2012 on, you would --  
2 you would ship it from Indianapolis directly to the  
3 stores in Ohio?

4 MR. HYNES: Objection.

5 BY THE WITNESS:

6 A. Only to the stores that the Indianapolis  
7 DC was servicing, and we were not servicing  
8 Cleveland or Akron area.

9 BY MR. ELSNER:

10 Q. In 2000 -- in what year?

11 A. I'm not sure of the year, but when --  
12 Somerset continued to deliver to those areas, but  
13 they were getting their -- their controlled  
14 products from another distribution center.

15 Q. I'm going to mark this as Exhibit 2,  
16 which is a list of stores that had been produced to  
17 us by CVS.

18 (WHEREUPON, a certain document was  
19 marked as CVS-Nicastro-002:

20 Document, "Track One CVS Store  
21 Information"; CVS-MDLT1-000007362 -  
22 000007364.)

23 BY MR. ELSNER:

24 Q. I want to ask whether you recognize

1     these as CVS stores that were provided hydrocodone  
2     combination products in Summit County and Cuyahoga  
3     County from the Indiana distribution center.

4             A.     I couldn't confirm each store number and  
5     date, but we did deliver to this area. So, if  
6     these are CVS stores, then, yes, we would have  
7     delivered to these stores.

8             Q.     Okay. Were you aware that the  
9     Controlled Substances Act had been in place since  
10    1970?

11            A.     Yes.

12            Q.     Okay. And are you aware that the  
13    Controlled Substances Act schedules various drugs  
14    based on their potential for abuse and whether the  
15    drug has an accepted medical use?

16            A.     I'm vaguely aware of the -- I know the  
17    schedules, but I am not an expert on it and I  
18    couldn't tell you what a Controlled II, III, IV, V,  
19    why they are in those classes based on those  
20    parameters.

21            Q.     But you know those schedules exist, is  
22    that right?

23            A.     Yes.

24            Q.     And you know that drugs that are a

1 Schedule II and Schedule III pose a high risk of  
2 addiction and diversion, is that right?

3 MR. HYNES: Objection to form.

4 BY THE WITNESS:

5 A. I know we are required -- well, we don't  
6 carry C-IIs because there is a lot more regulatory  
7 control over it than C-III through V.

8 BY MR. ELSNER:

9 Q. When you say there is a lot more  
10 regulatory control, did someone tell you that  
11 that's the reason that you don't -- that CVS does  
12 not distribute Schedule II drugs?

13 A. No. But the facility that I'm in used  
14 to be the Hooks headquarters, and I was told back  
15 in the day when Hooks had that, you know,  
16 distributed drugs, they did C-IIs and they had --  
17 it was a safe, a vault. So, the C-IIs had to be  
18 stored in a vault and all that kind of thing.

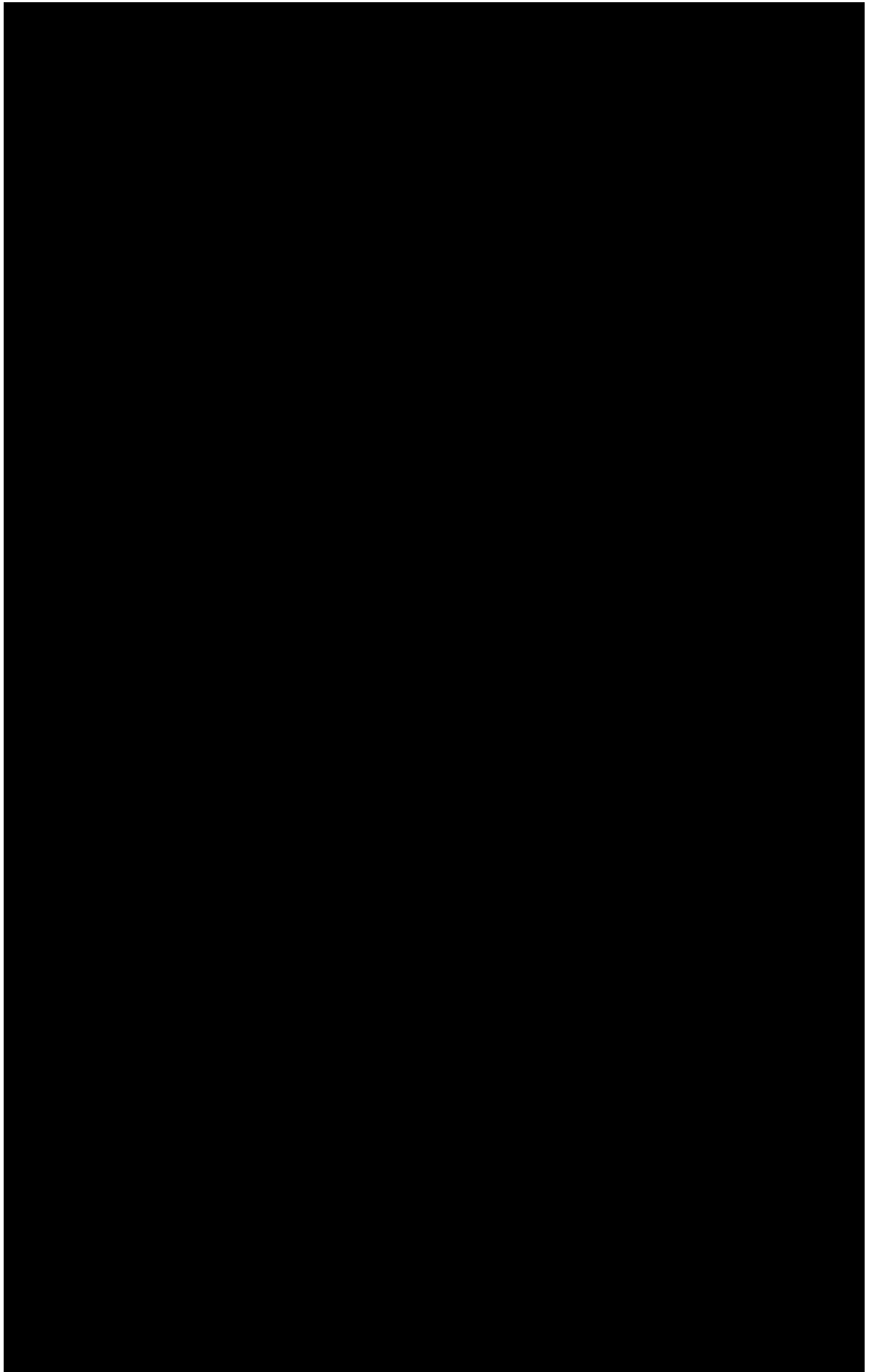
19 So, but that's -- that's my knowledge of  
20 it. I don't know the regulations to control -- to  
21 handle C-IIs. I just know we don't.

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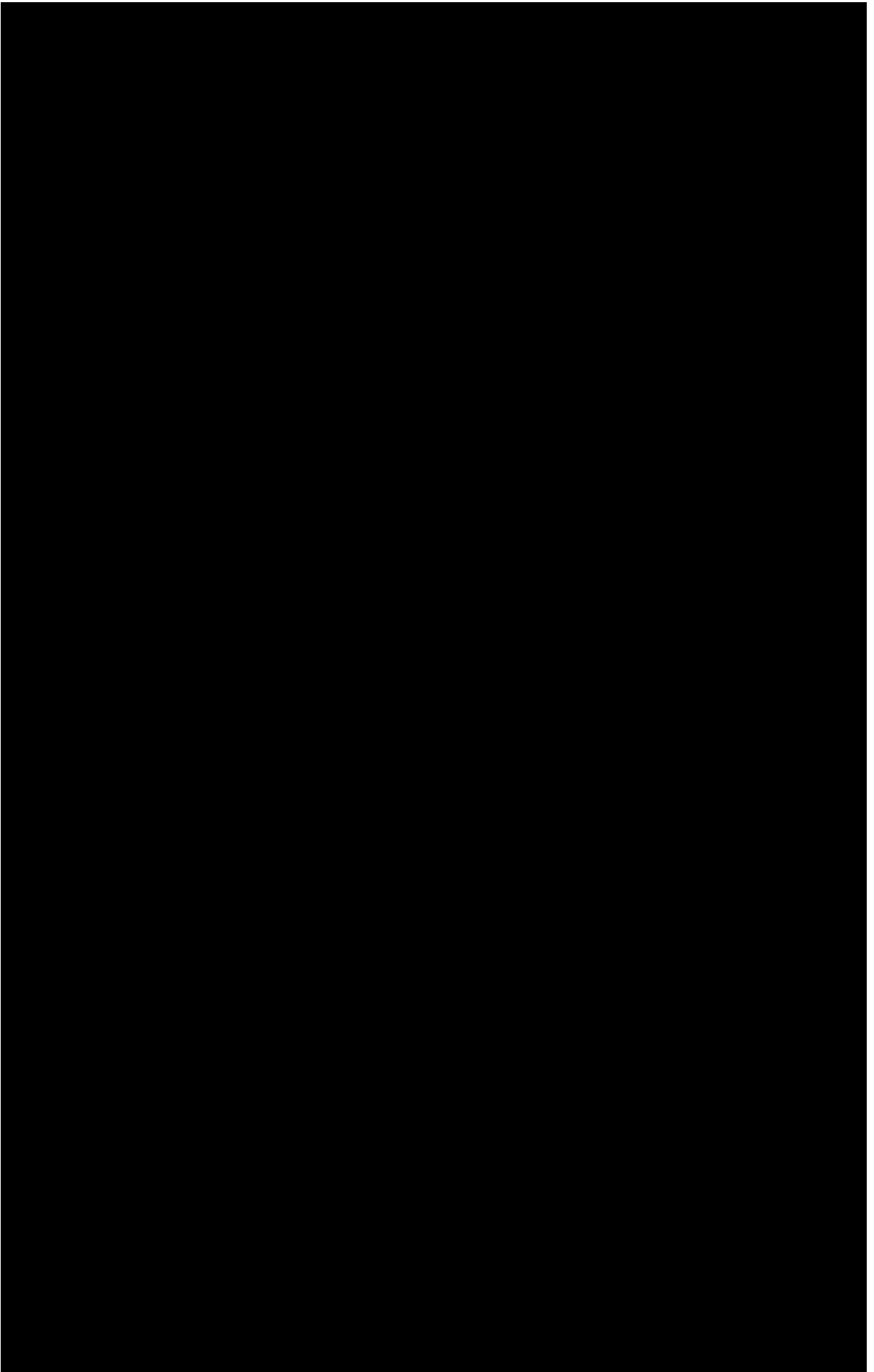
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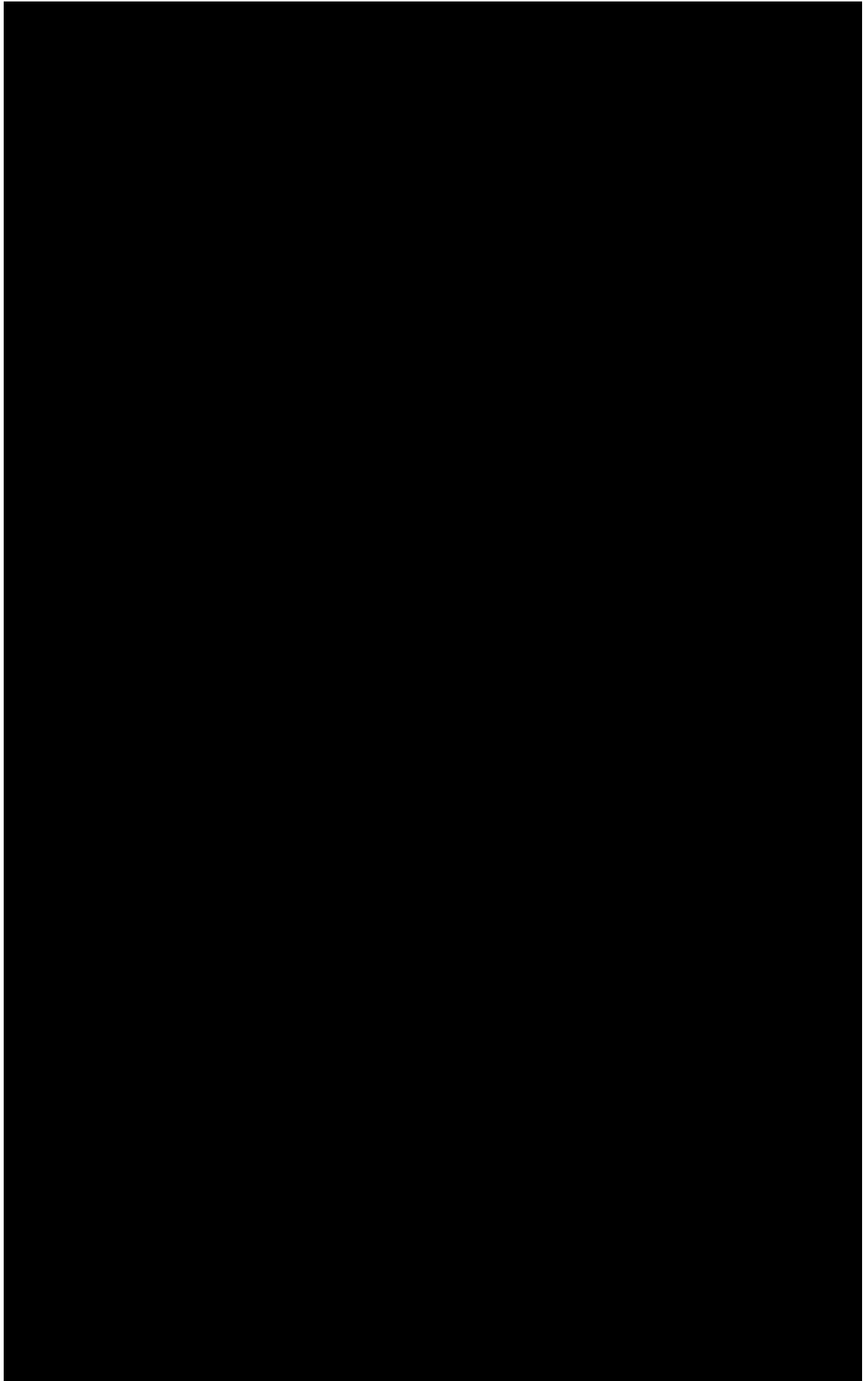
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10 MR. HYNES: Can we go off the record for a  
11 second. This is not updating.

12 MR. ELSNER: Can we go off the record.

13 THE VIDEOGRAPHER: Going off the record at  
14 9:35.

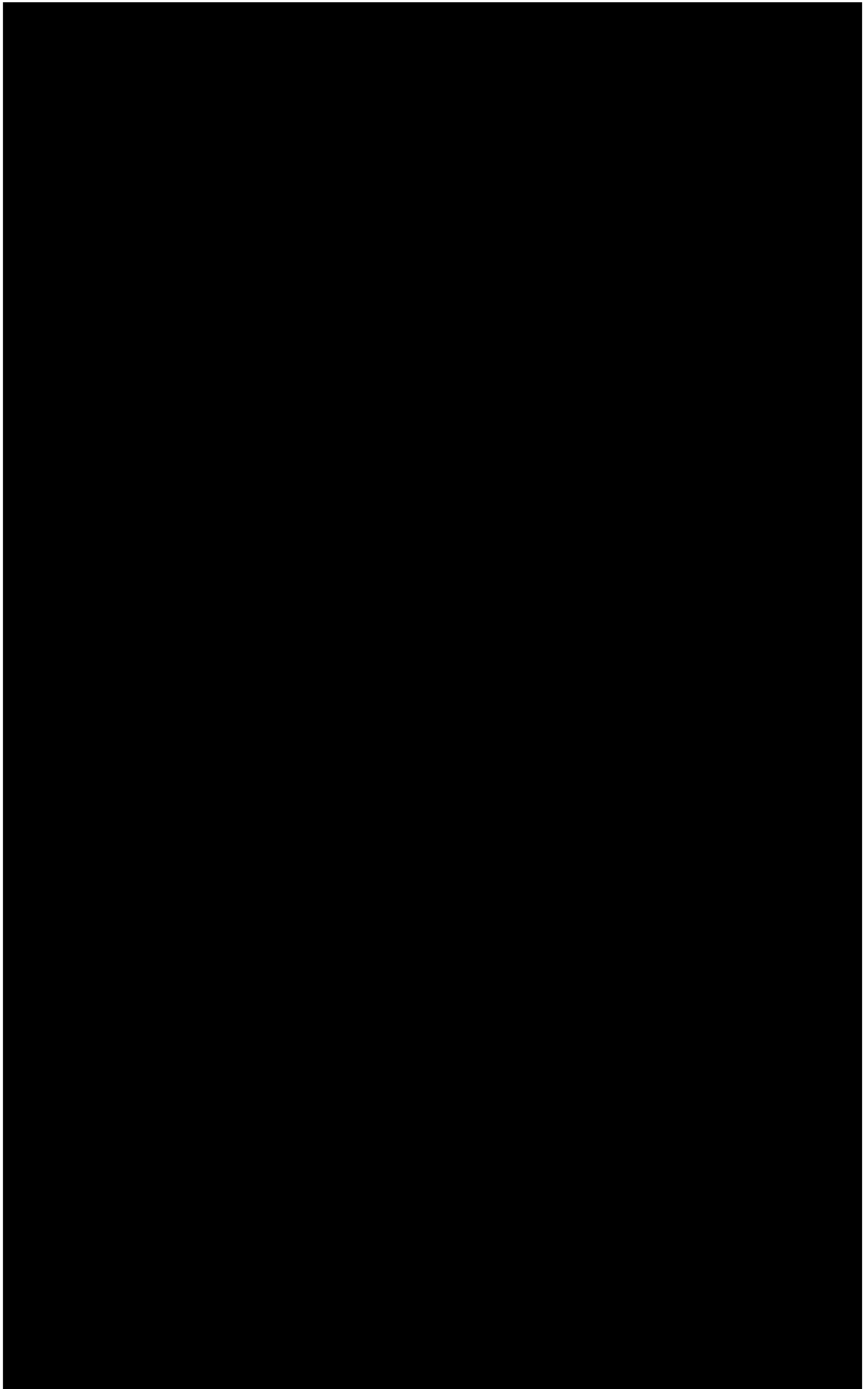
15 (WHEREUPON, a recess was had  
16 from 9:35 to 9:37 a.m.)

17 THE VIDEOGRAPHER: We are back on the record  
18 at 10:30 -- I'm sorry -- 9:37.

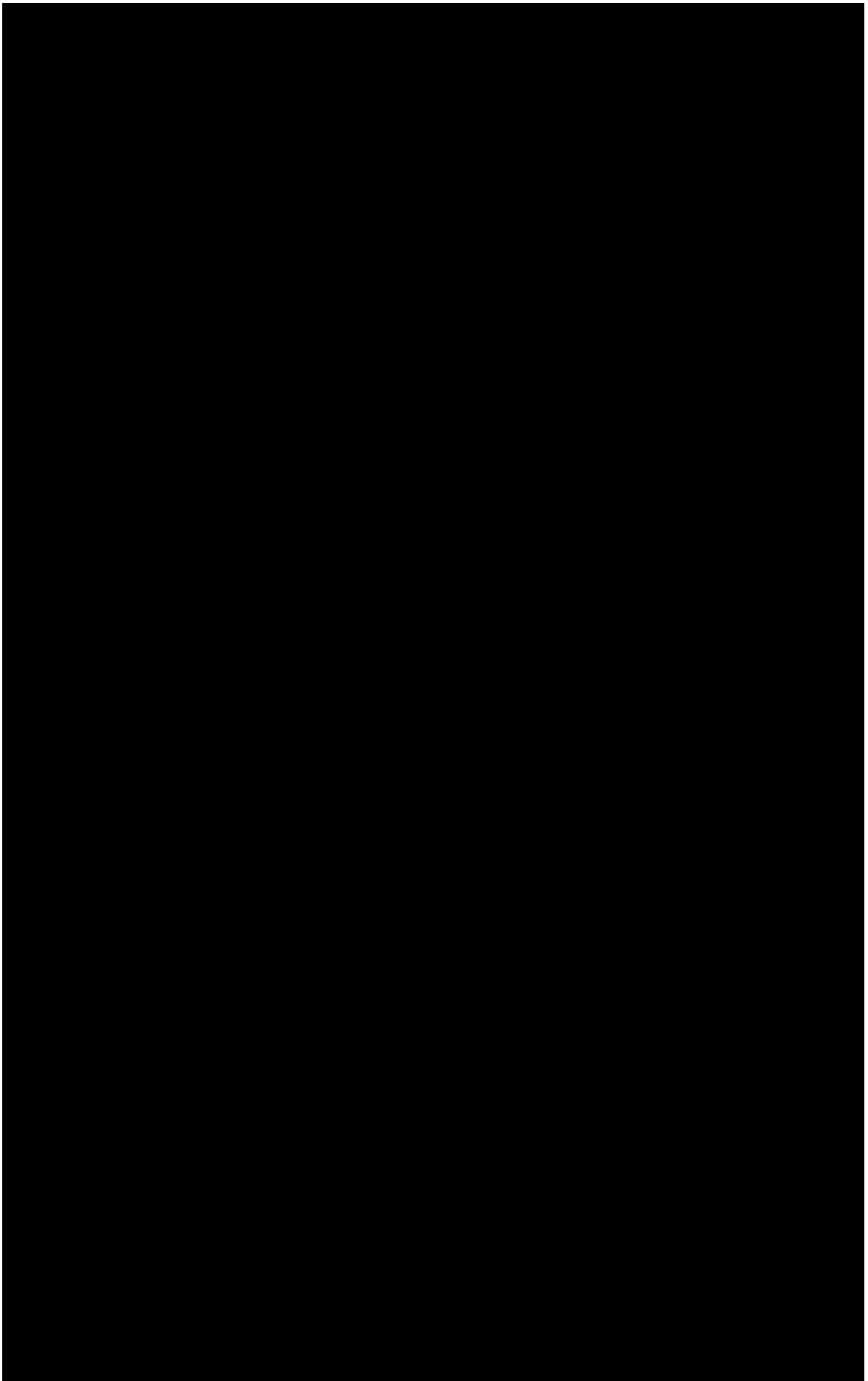
19 BY MR. ELSNER:

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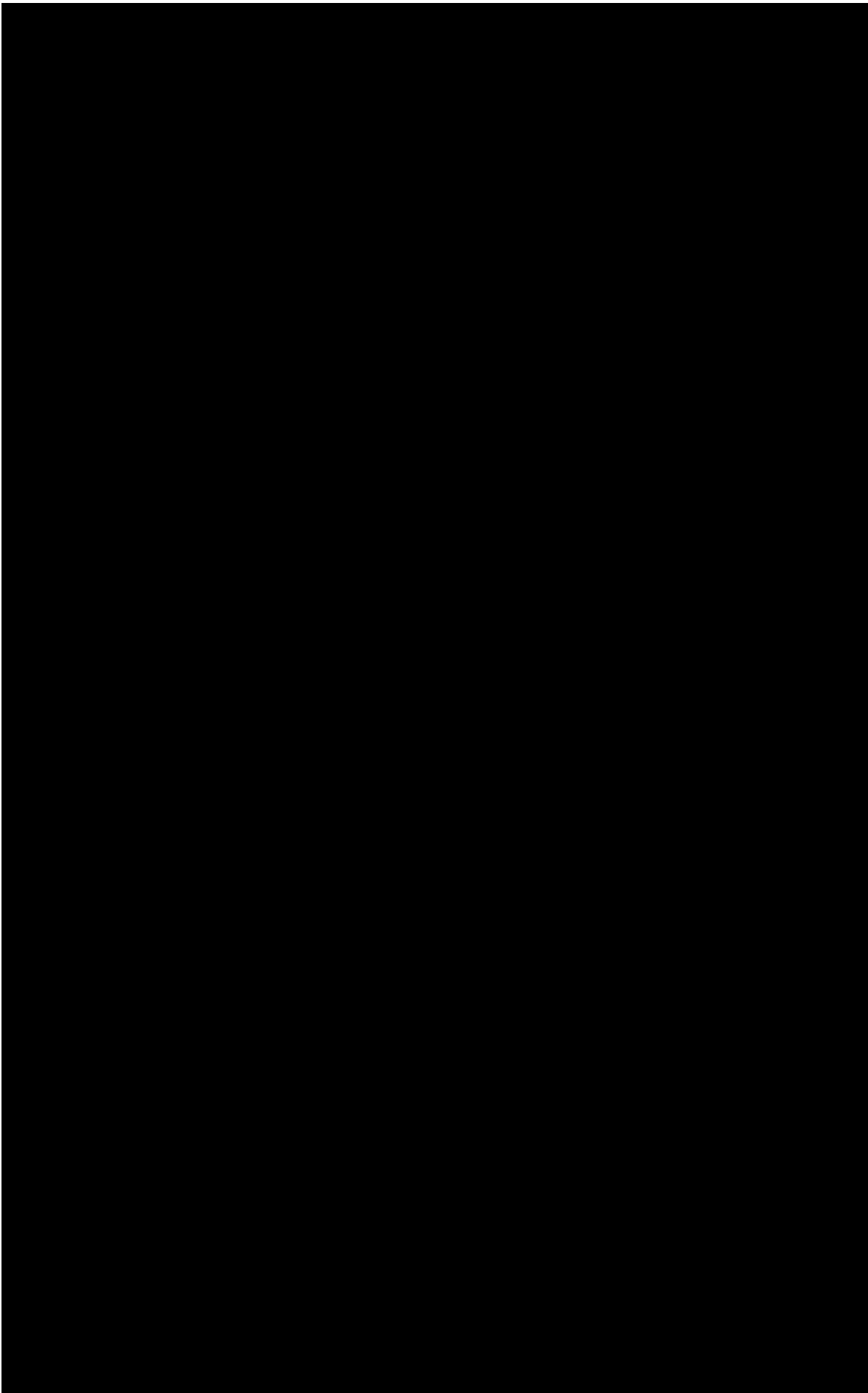
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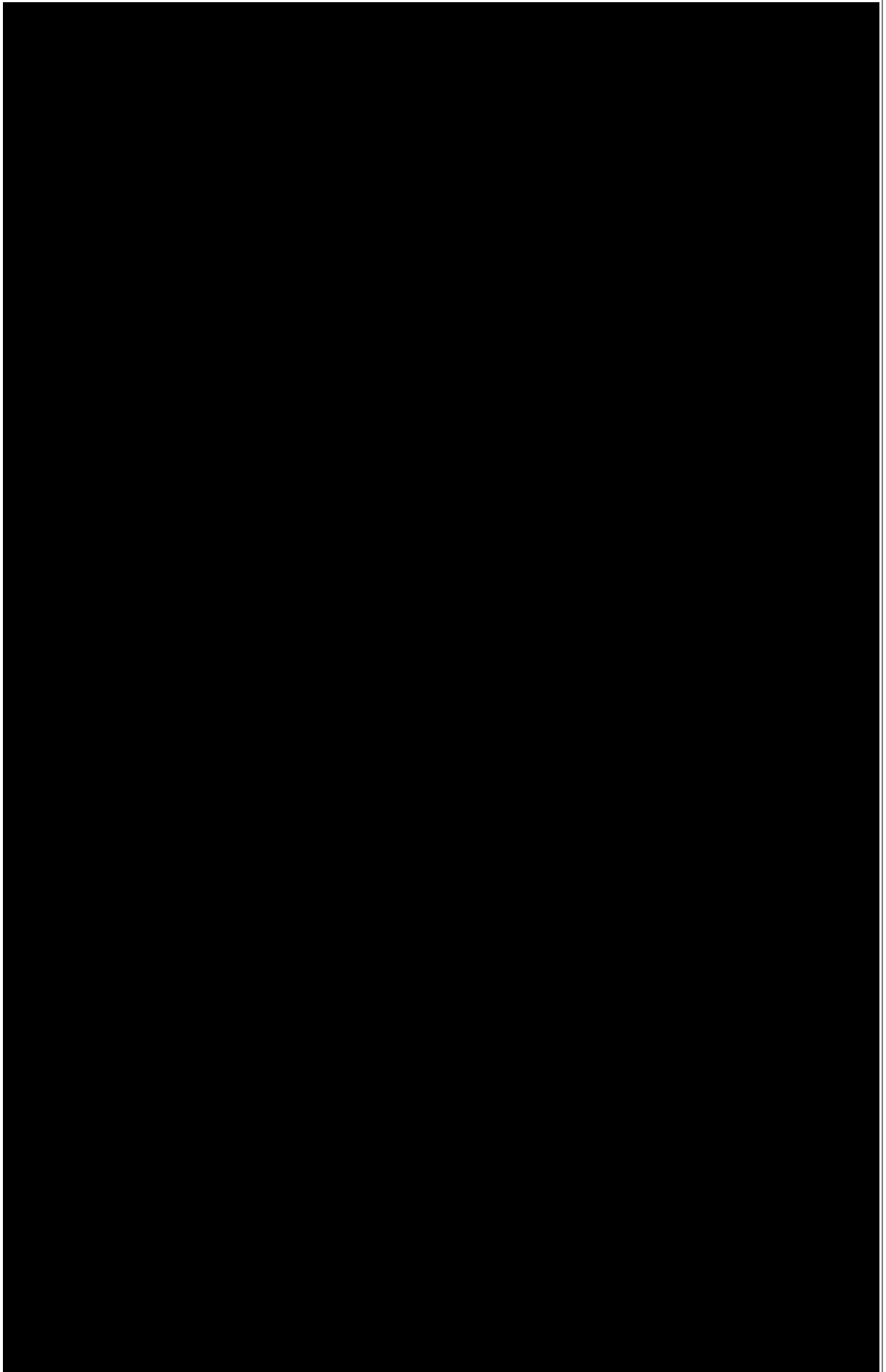
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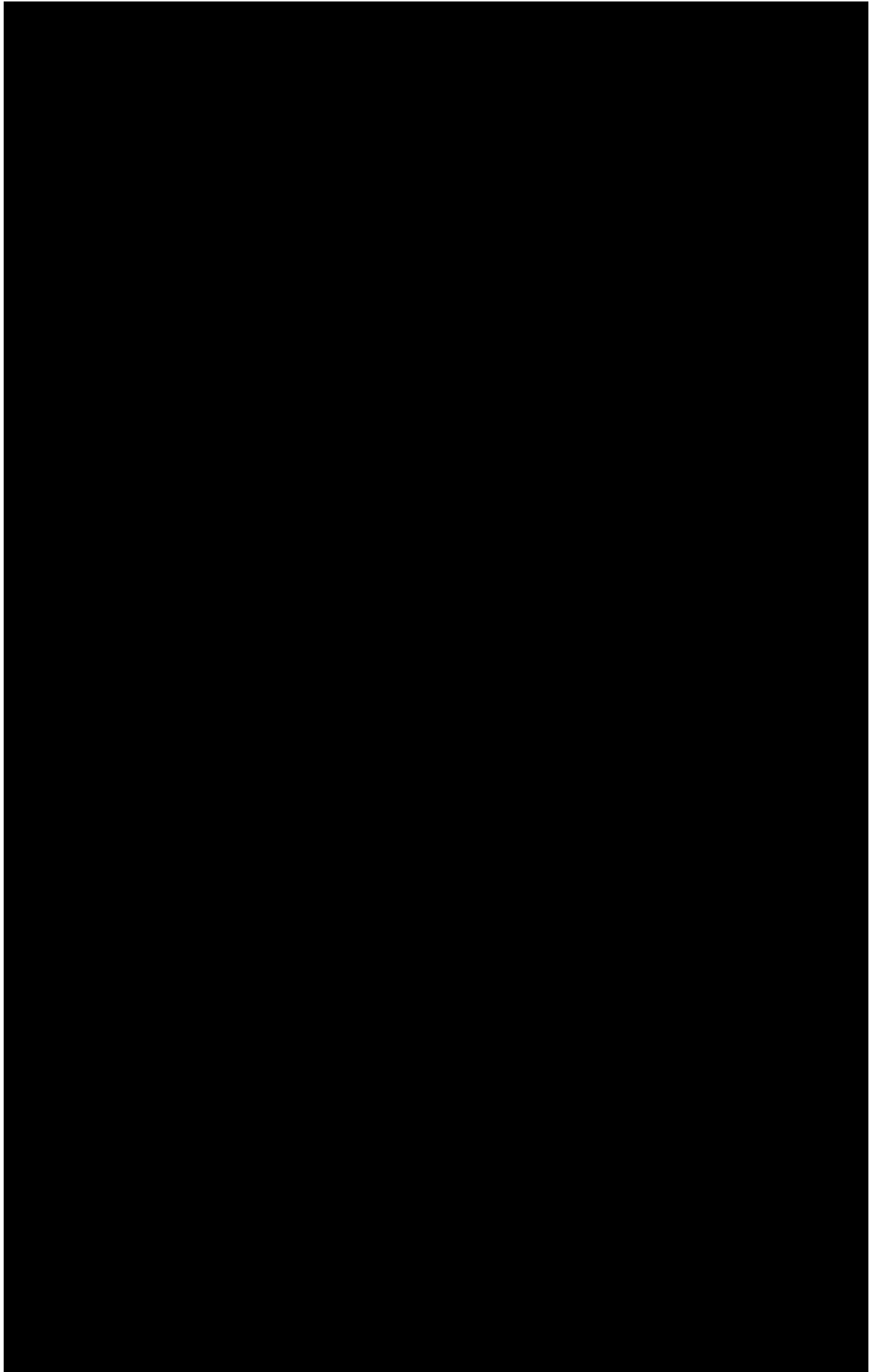
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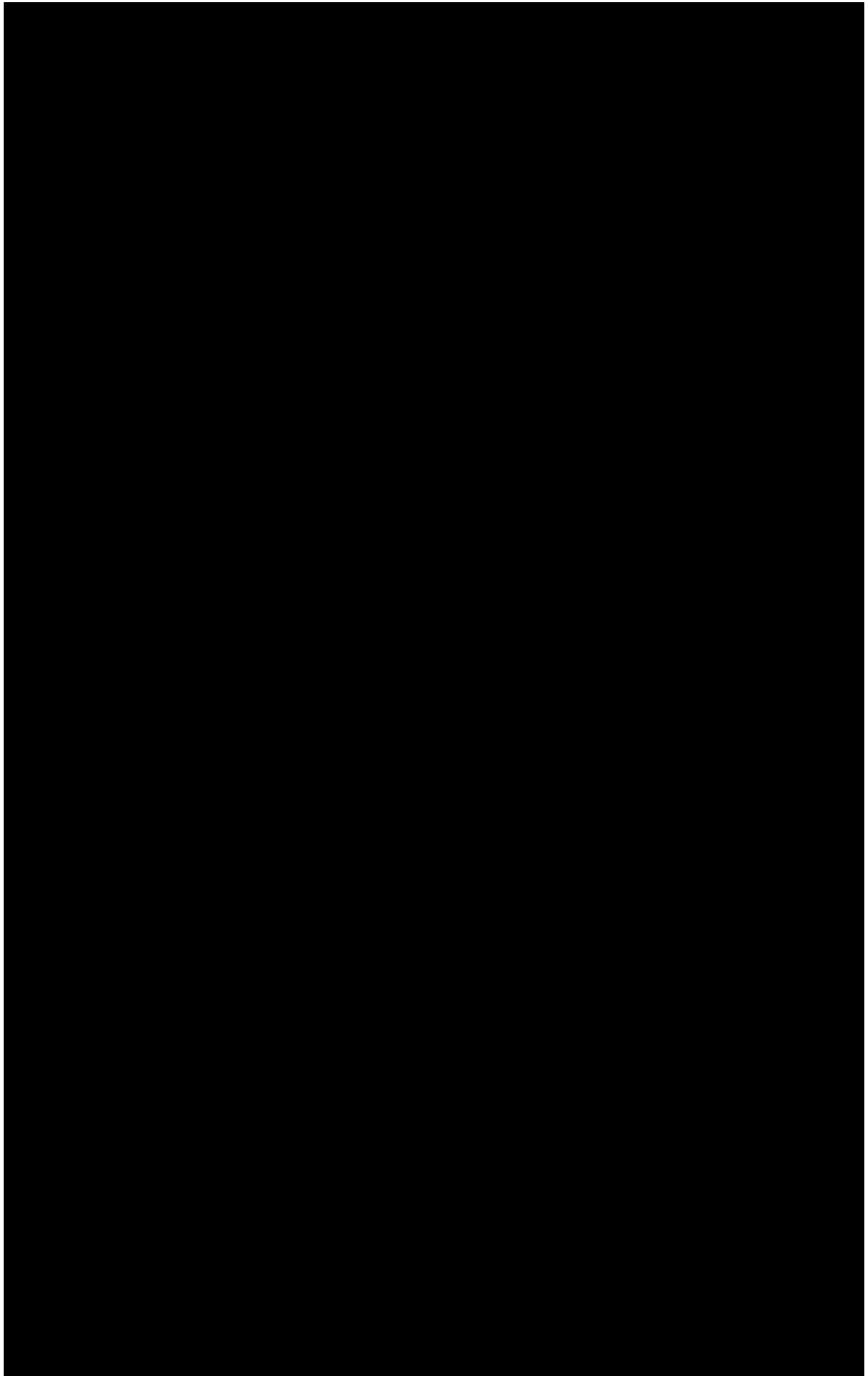
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1 Q. And what's the purpose of the process?

2 A. To identify orders that we need to do  
3 further research on to determine if it truly is  
4 suspicious or not.

5 Q. And suspicious of what?

6 A. Suspicious of -- well, kind of the three  
7 things, unusual size, frequency and pattern, to try  
8 to identify if there is anything suspicious about  
9 the order I guess that we shouldn't be shipping  
10 this product to a particular store for one of those  
11 reasons. It's unusually large, the pattern,  
12 frequency.

13 Q. And what was the purpose behind that?  
14 Why were you looking for orders of unusual size,  
15 unusual frequency?

16 A. To -- to basically prevent product from  
17 going to a store that they don't need or don't, you  
18 know -- don't need. Sending too much of one item  
19 to a store that they don't require.

20 Q. Was it put in place to -- was it that?  
21 Was it for supply reasons, to make sure that the  
22 store wasn't oversupplied or undersupplied with the  
23 controlled substances?

24 A. It's part of knowing our customer. So,

1 knowing the store's ordering habits and just making  
2 sure that too much inventory is not going into a  
3 particular store if it's not what they normally  
4 order.

5 Q. Why?

6 MR. HYNES: Objection; asked and answered. Go  
7 ahead.

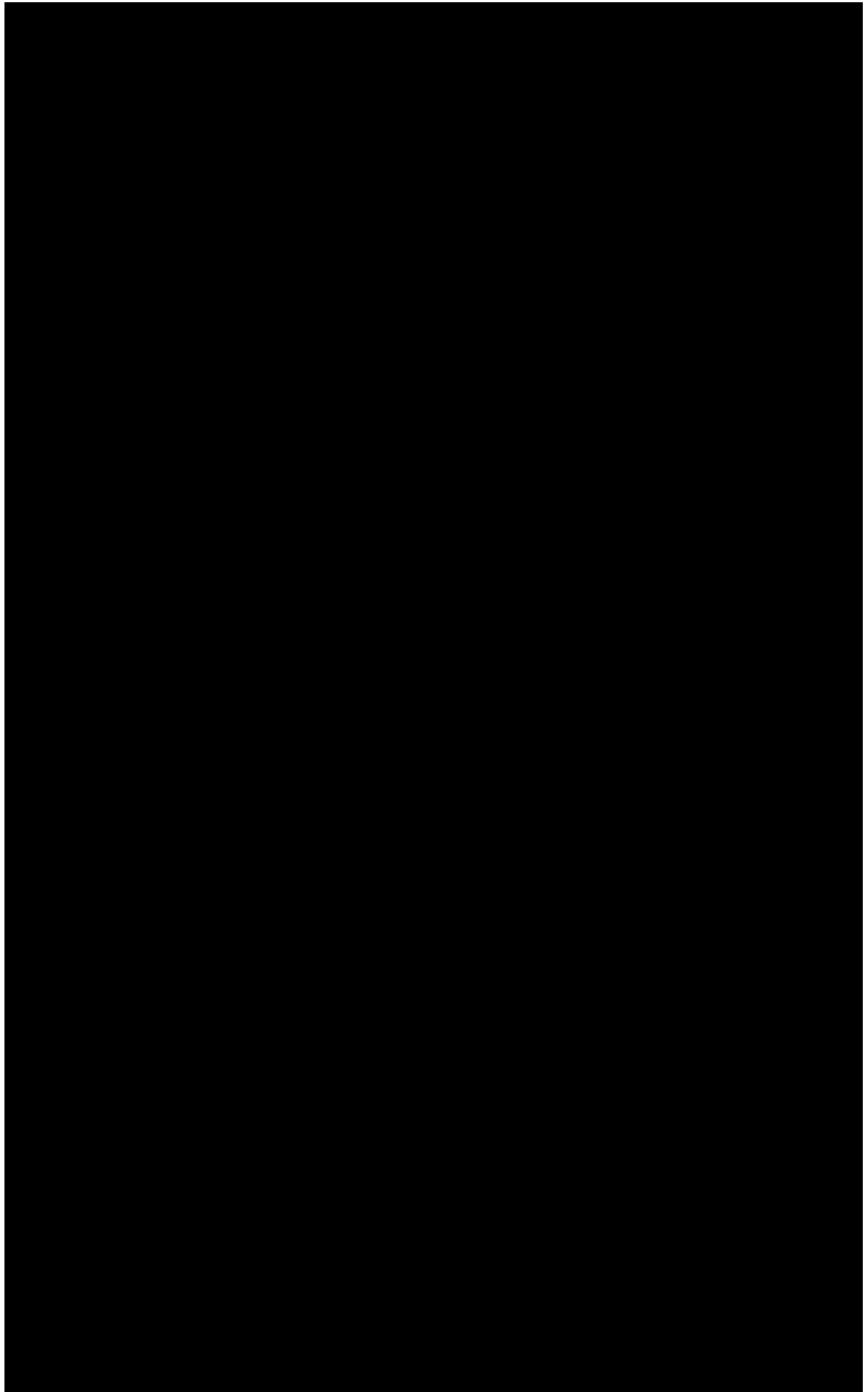
8 BY THE WITNESS:

9 A. It's required by the DEA.

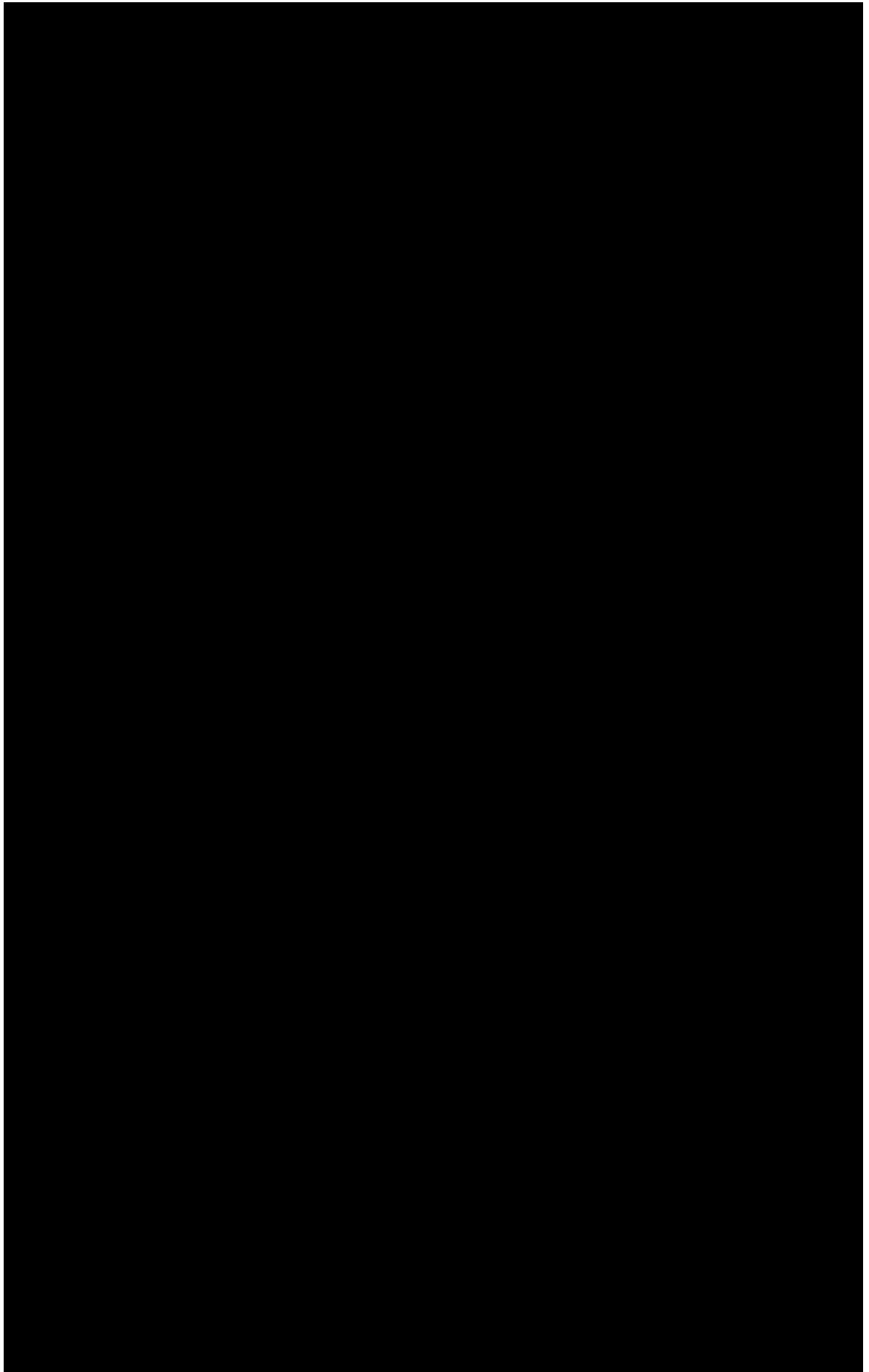
10 BY MR. ELSNER:

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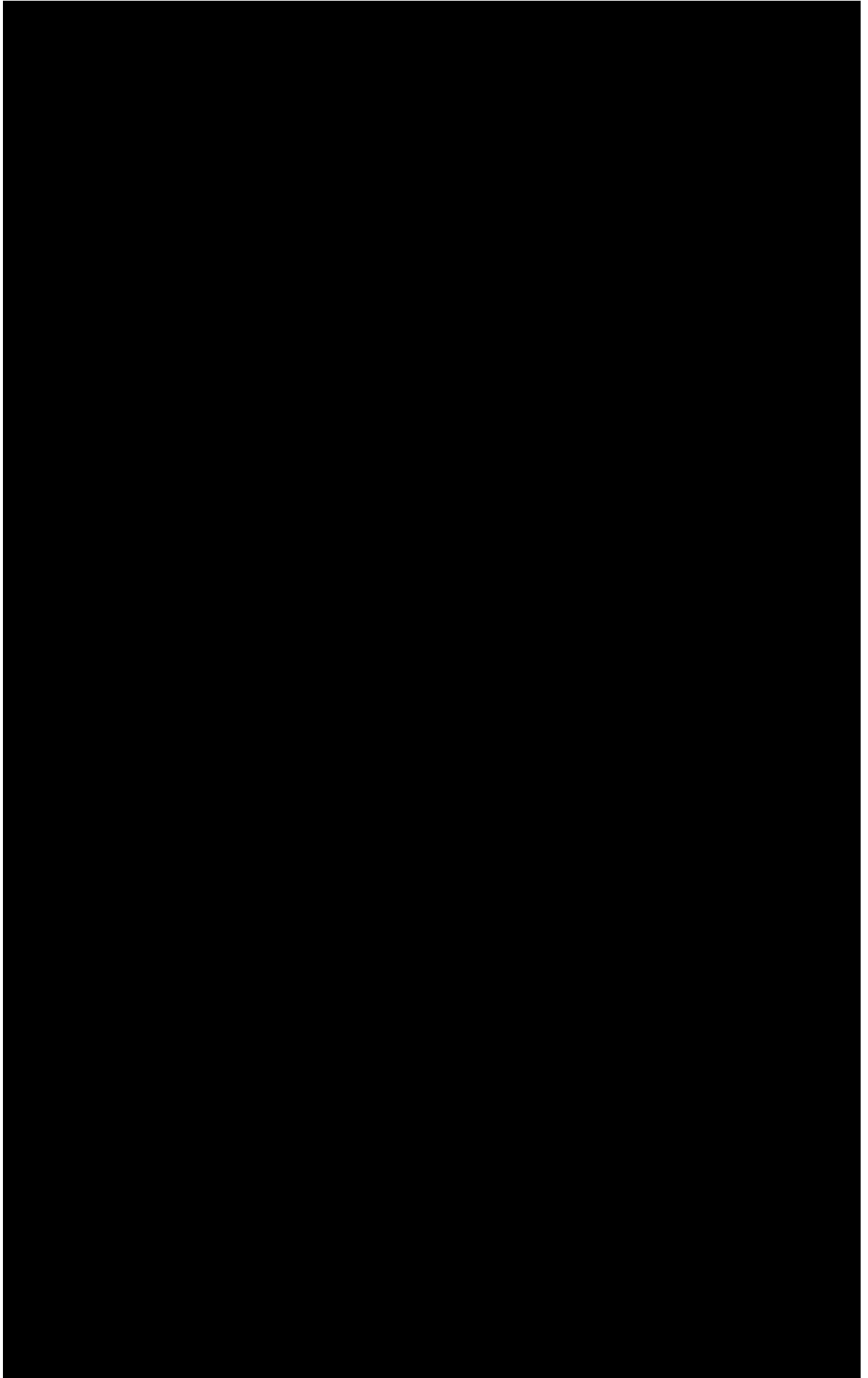
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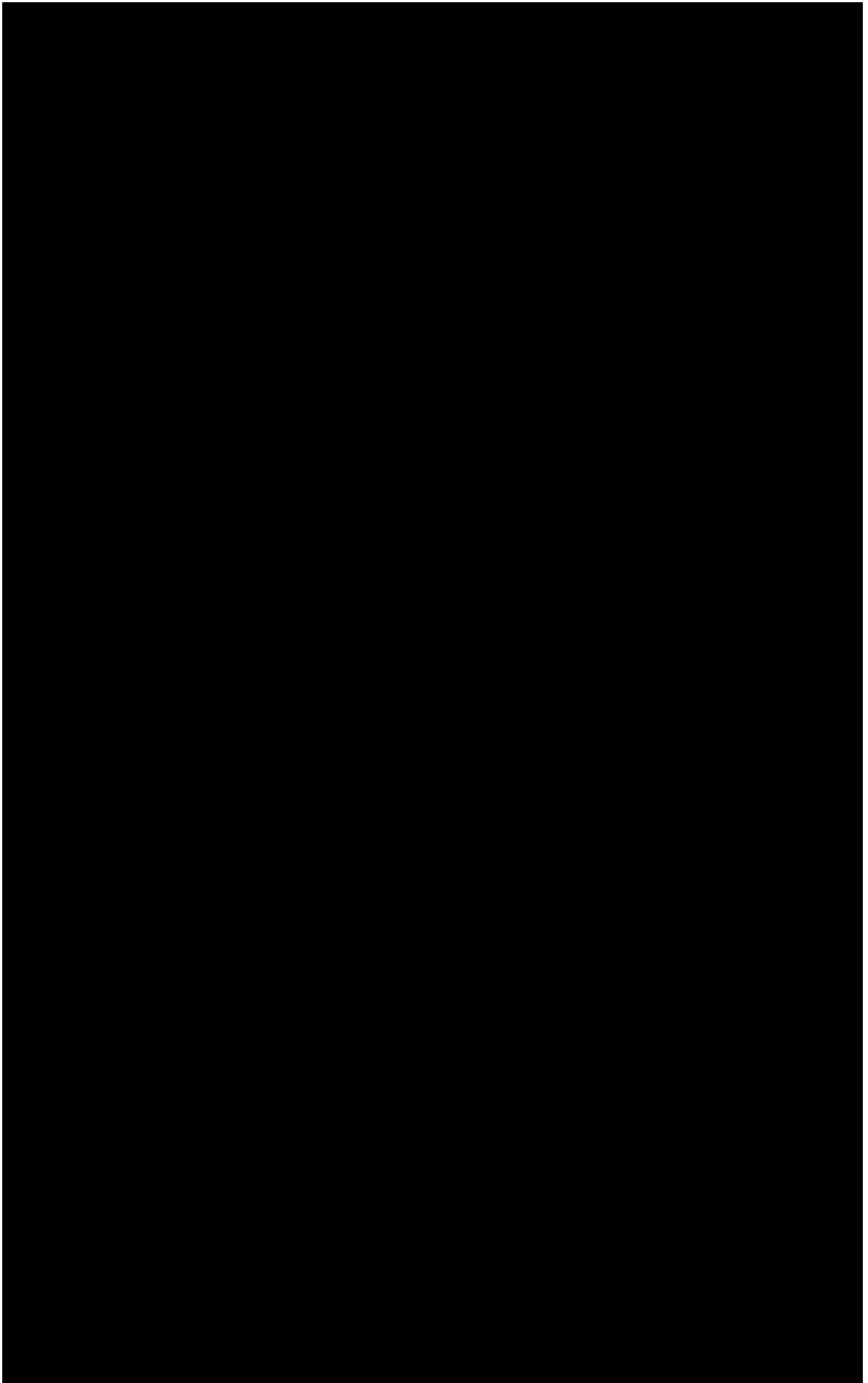
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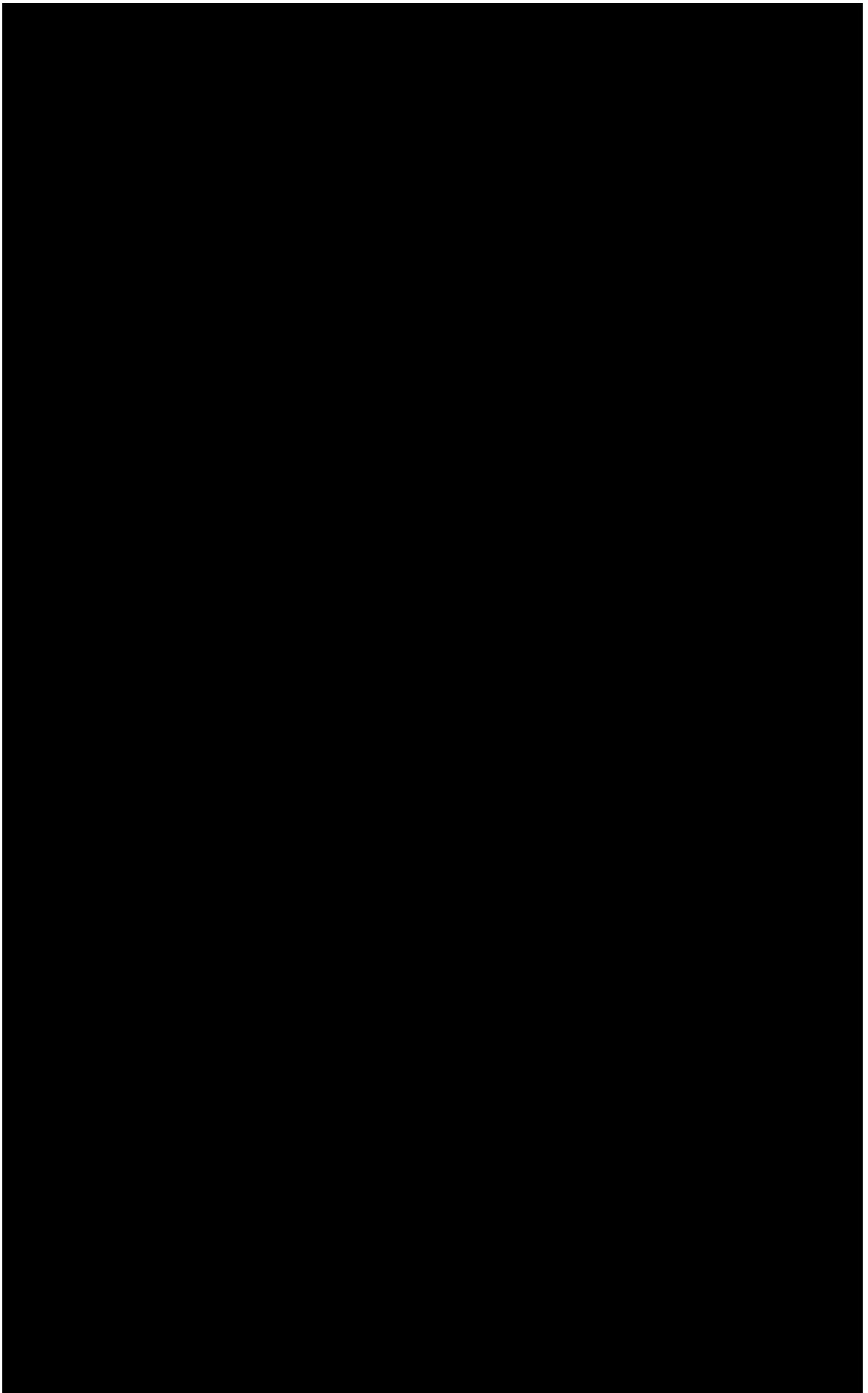
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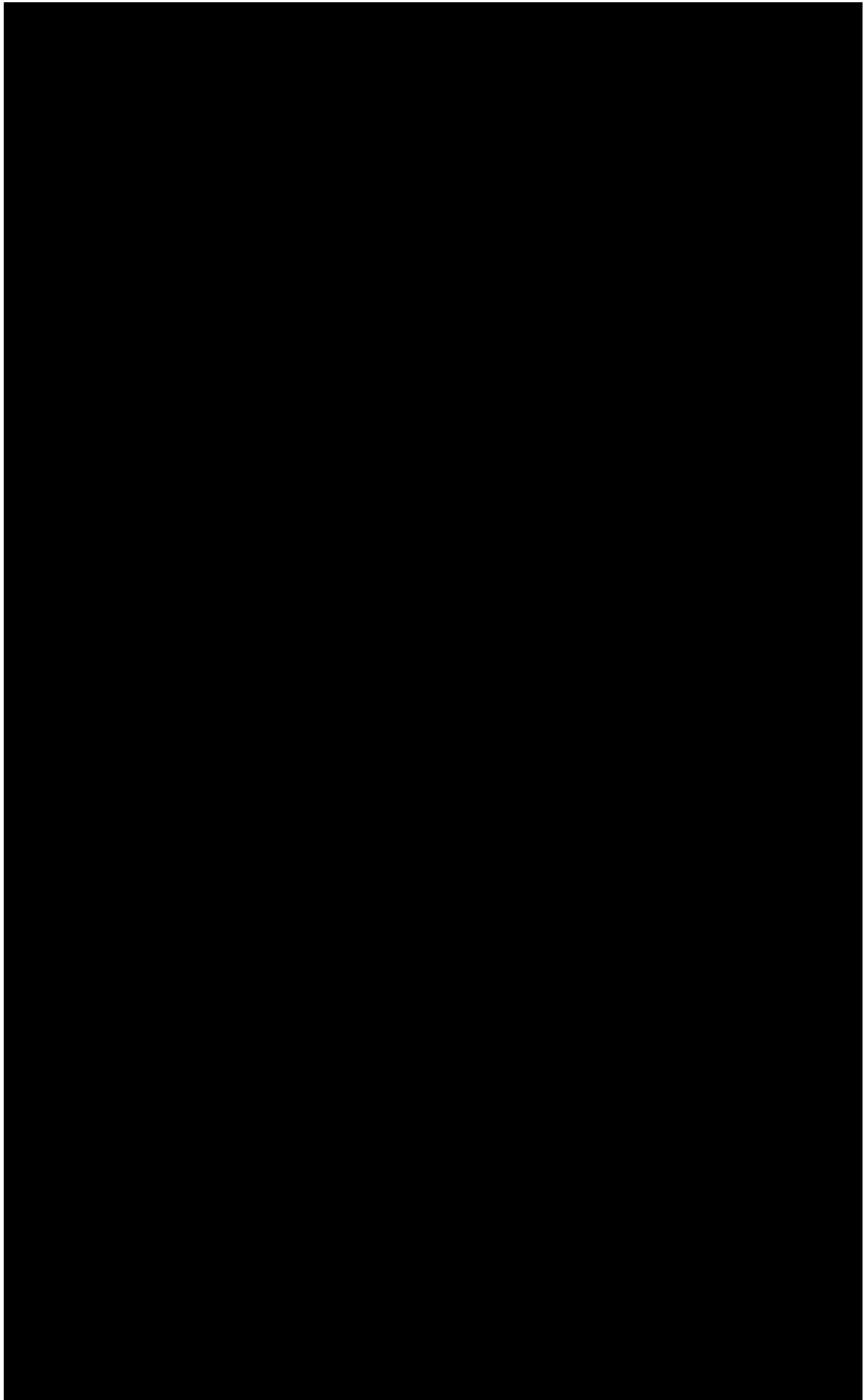
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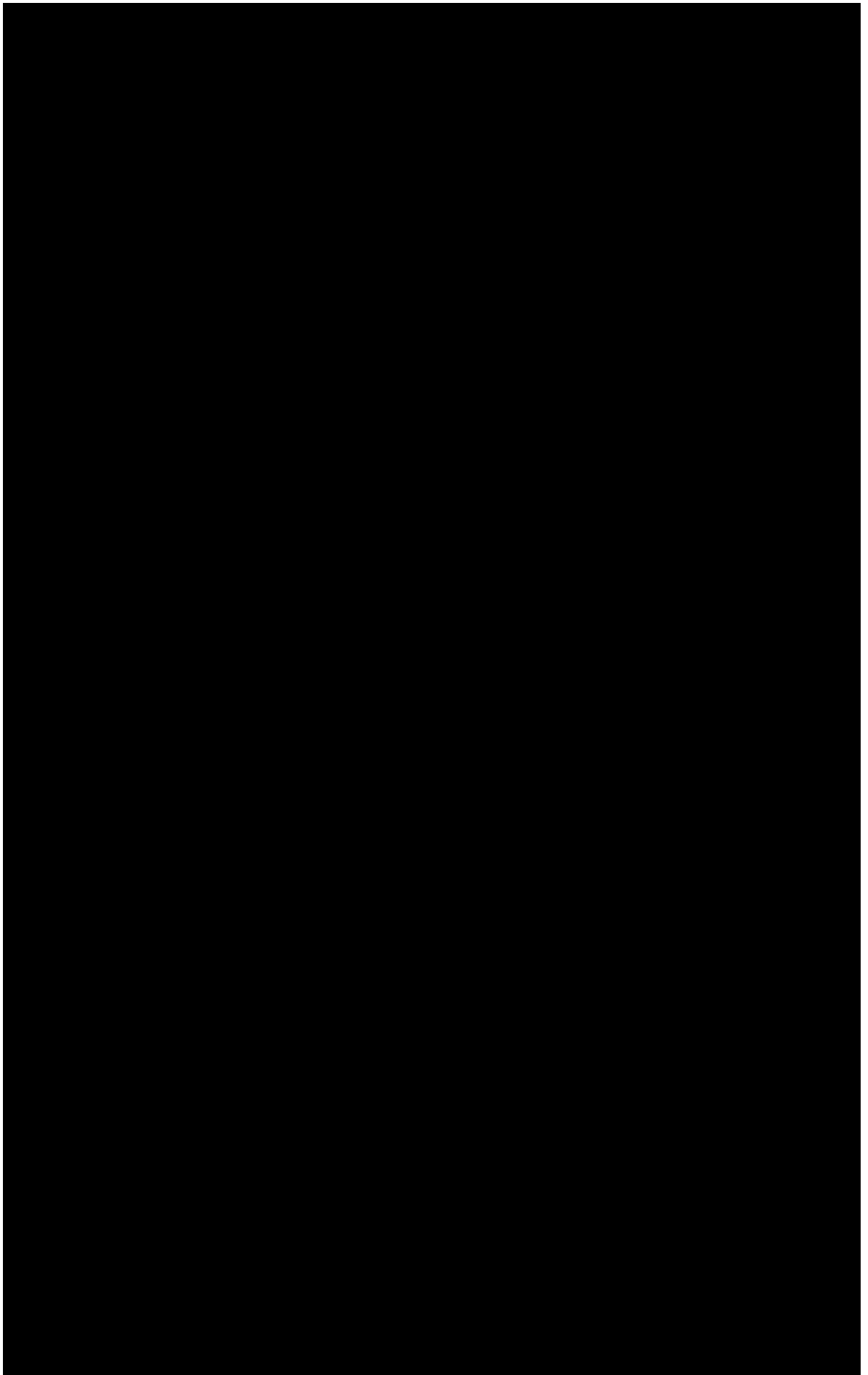
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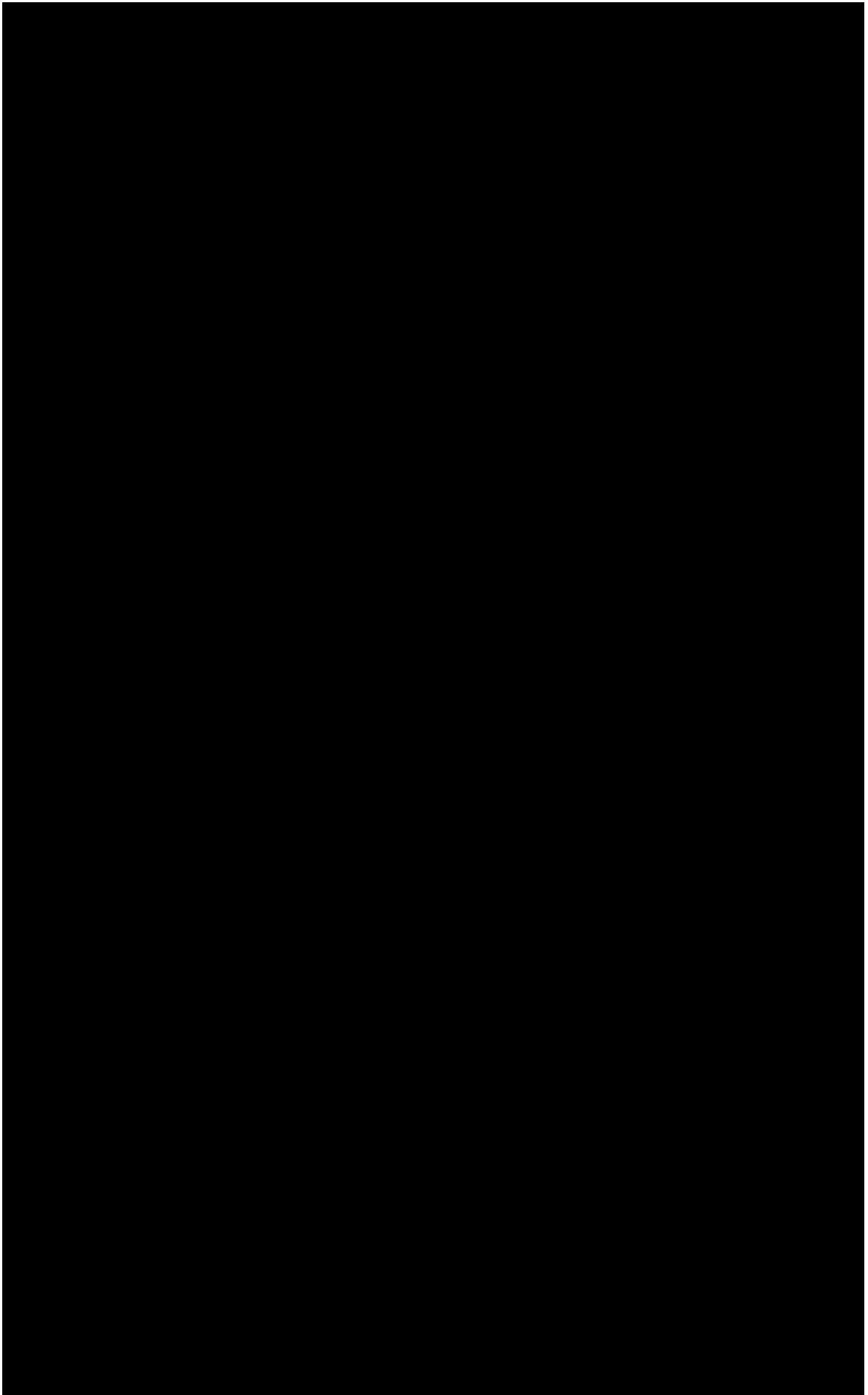
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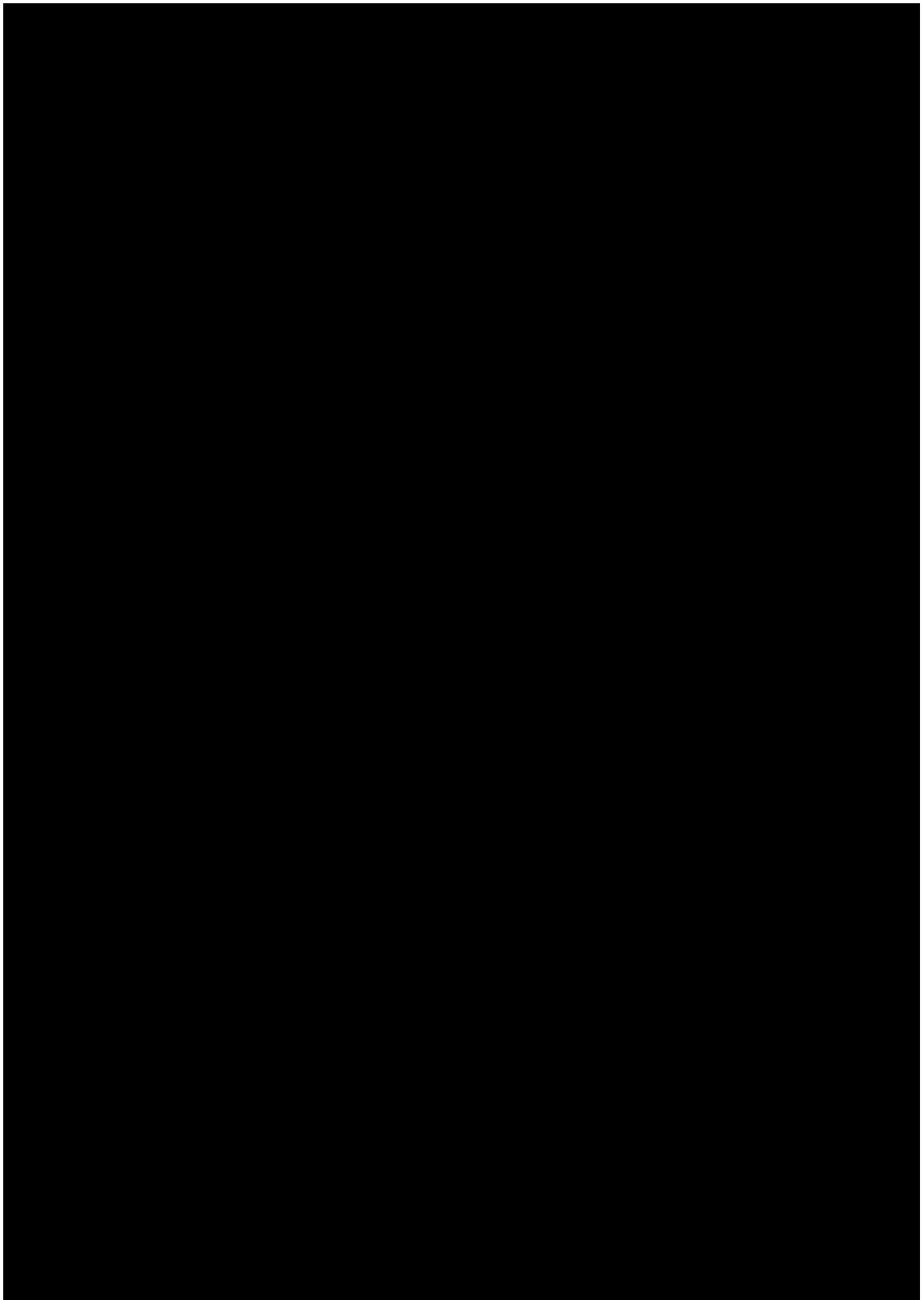
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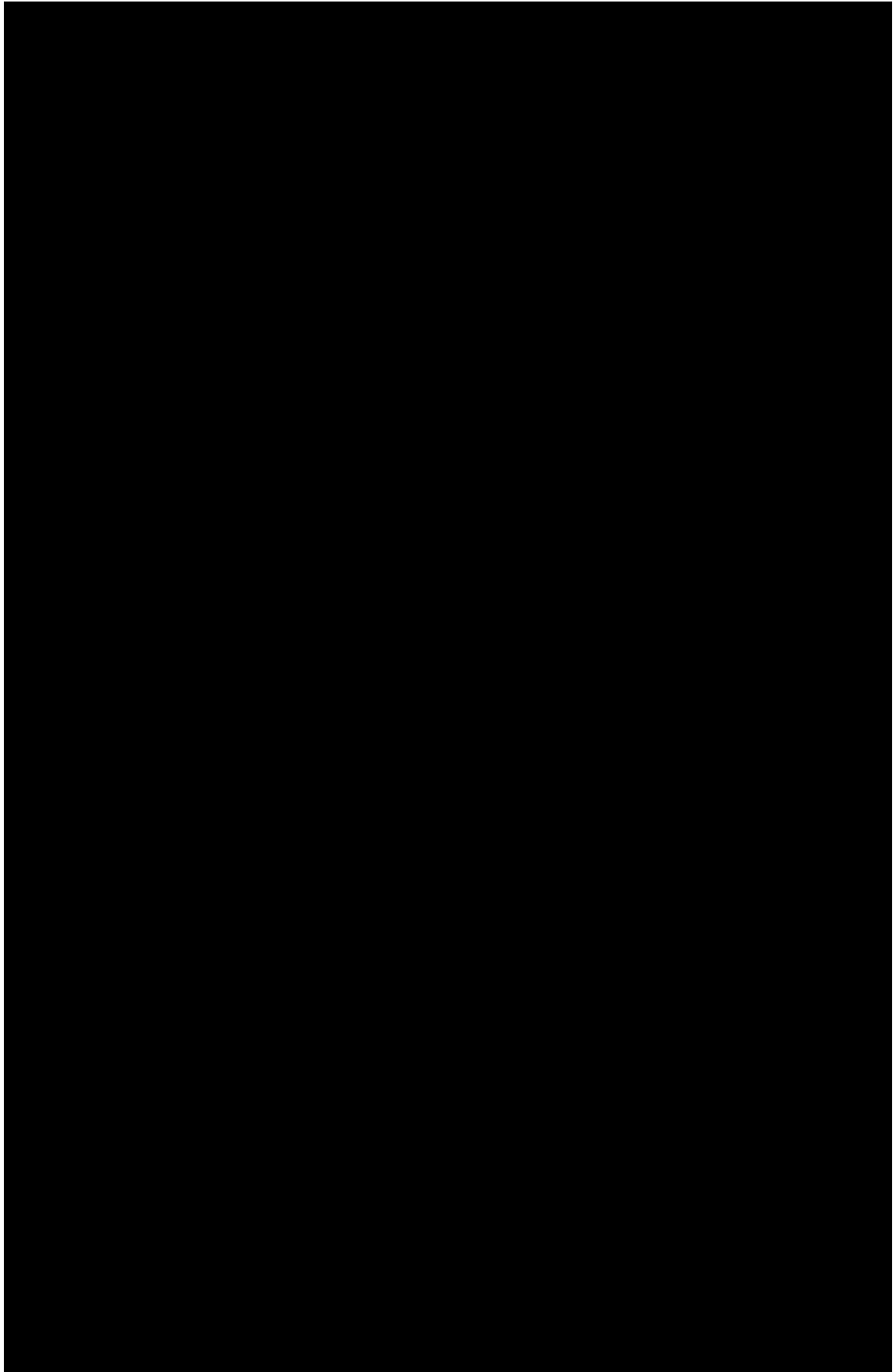
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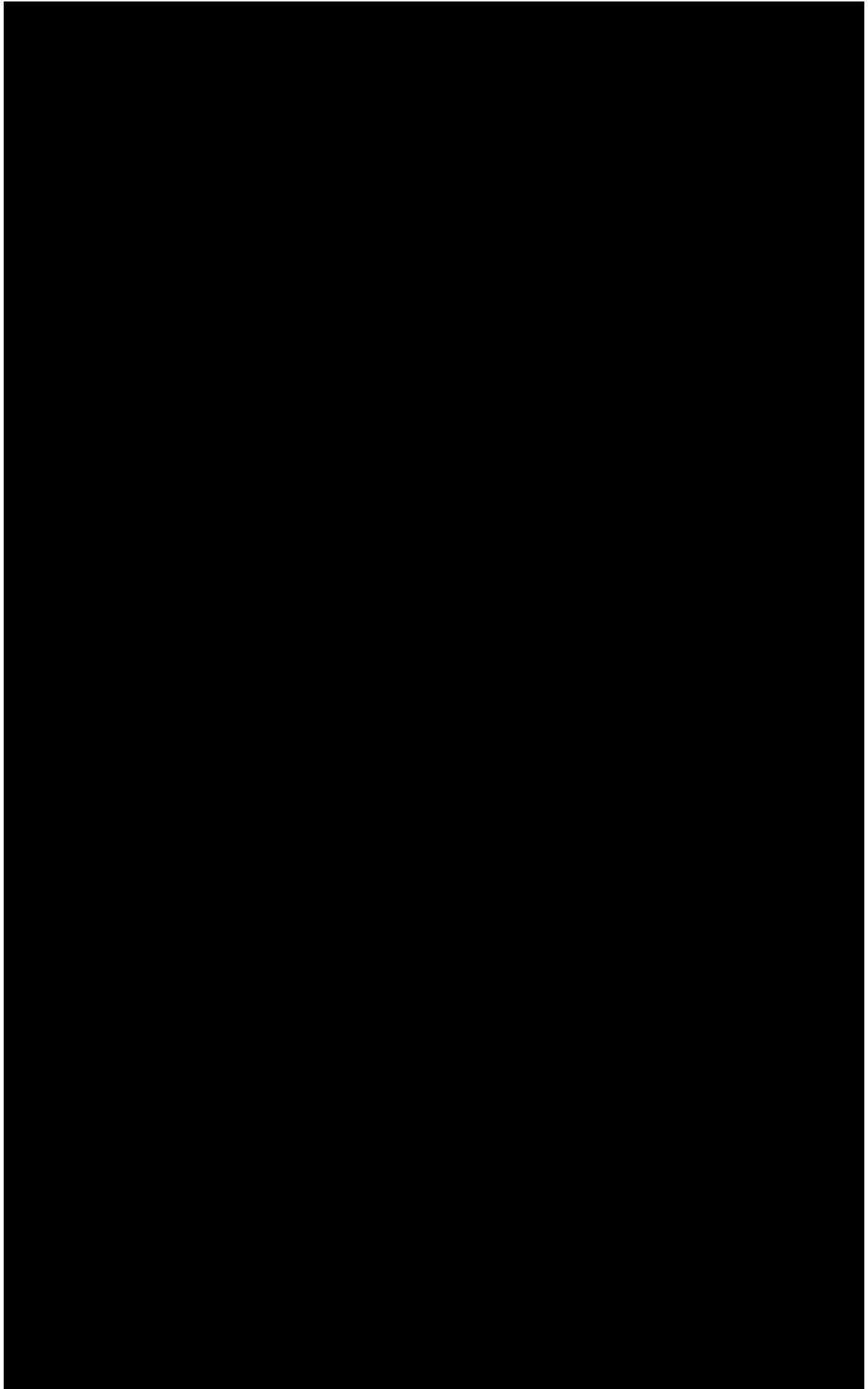
22           Q.       And where was he located?  
23           A.       Rhode Island.  
24           Q.       In Rhode Island?

1           A.       Corporate.

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11 Q. Who is Terrence Dugger?

12 A. Terrence Dugger was the loss prevention  
13 manager at Indianapolis.

14 Q. And so he worked for you?

15 A. No. He worked for Frank Devlin. The  
16 loss prevention managers don't report to the  
17 operations.

18 Q. But he worked in the Indianapolis  
19 facility, is that right?

20 A. Yes.

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6 MR. ELSNER: Why don't we take a quick break  
7 if we could.

8 MR. HYNES: Okay.

9 THE VIDEOGRAPHER: Going off the record at  
10 10:06.

11 (WHEREUPON, a recess was had  
12 from 10:06 to 10:19 a.m.)

13 THE VIDEOGRAPHER: We are back on the record  
14 at 10:19.

15 (WHEREUPON, a certain document was  
16 marked as CVS-Nicastro-011:  
17 5/19/09 e-mail string;  
18 CVS-MDLT1-000034234 - 000034235.)

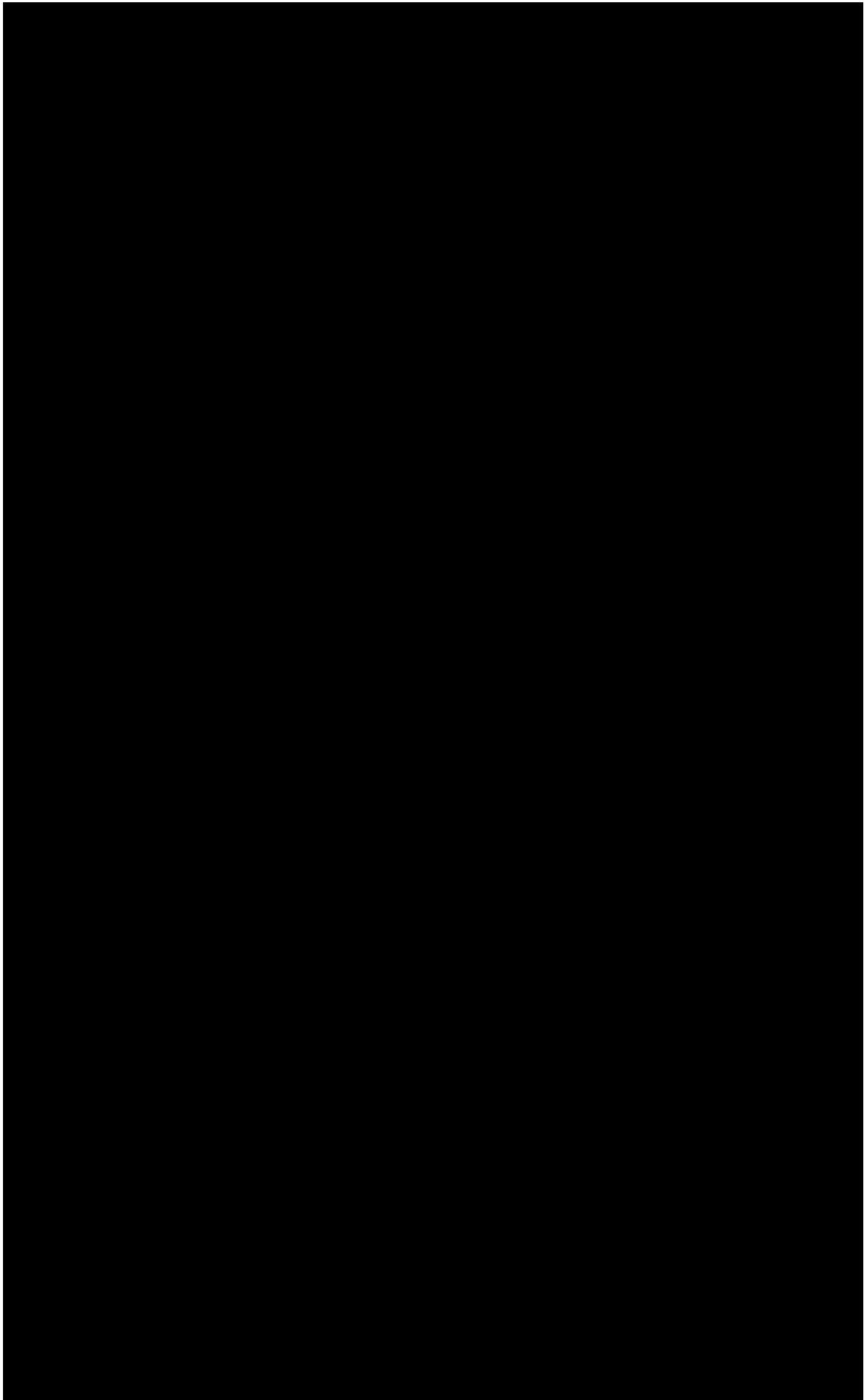
19 BY MR. ELSNER:

20 Q. Mr. Nicastro, I'm going to show you what  
21 we've marked as Exhibit 11. Just have it nearby.  
22 We may refer back to it.

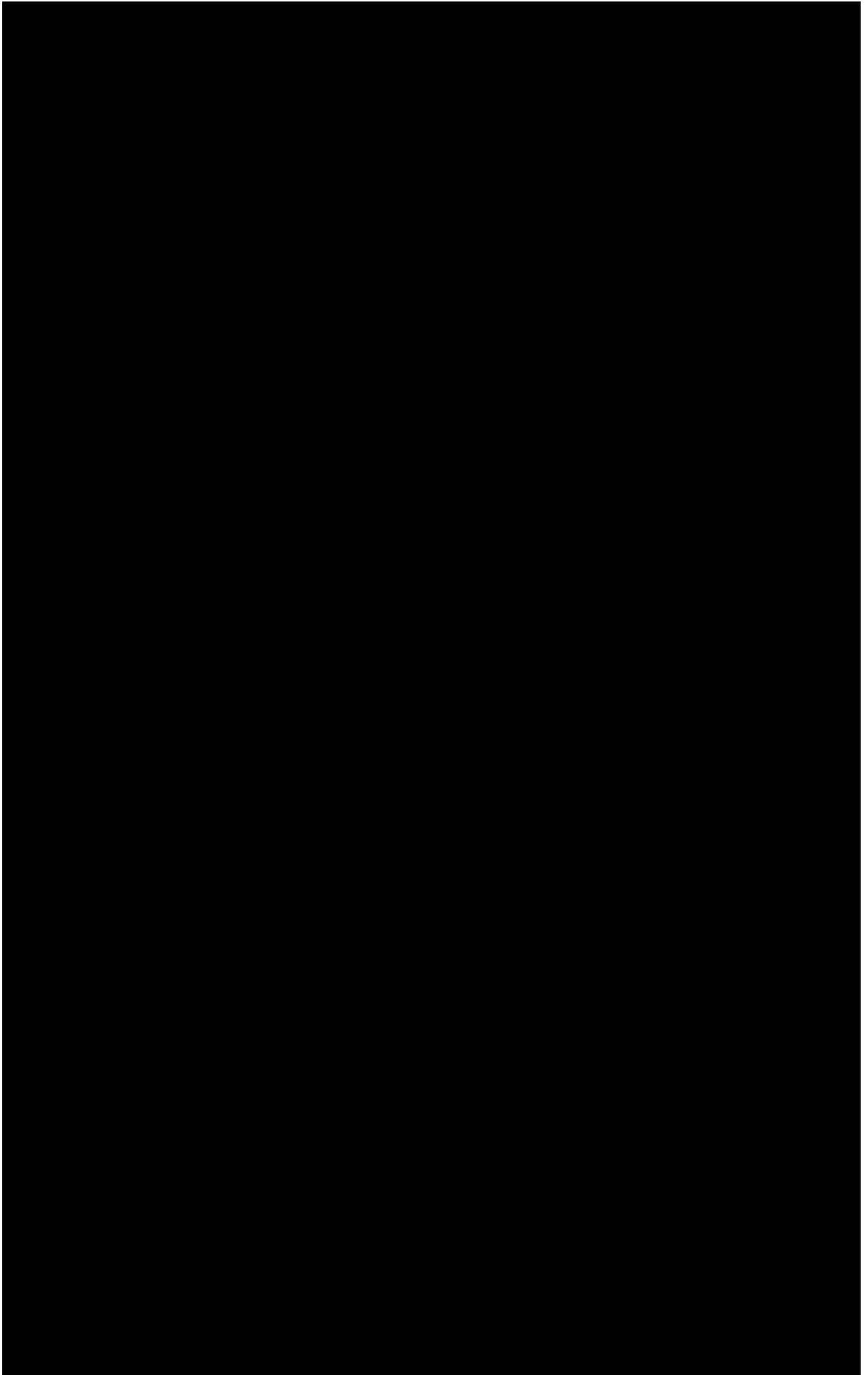
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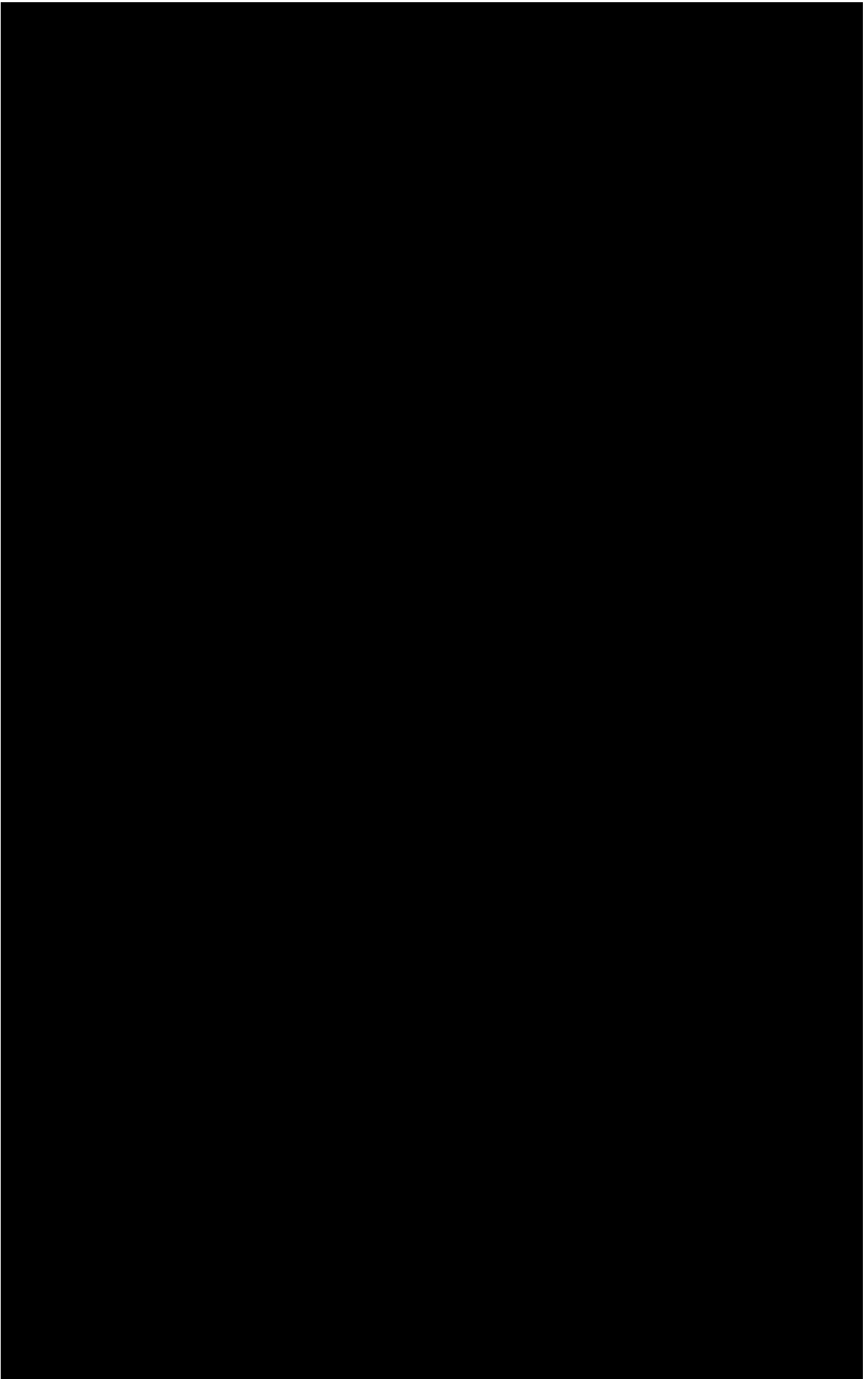
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I'm sorry. Can you ask the question

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again?

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BY MR. ELSNER:

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Q. Well, let me show you Exhibit 12. I

6

will strike that question.

7

(WHEREUPON, a certain document was

8

marked as CVS-Nicastro-012: CVS

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Controlled Drug-DEA Standard

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Operating Procedures Manual;

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CVS-MDLT1-000088957 - 000089025.)

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BY MR. ELSNER:

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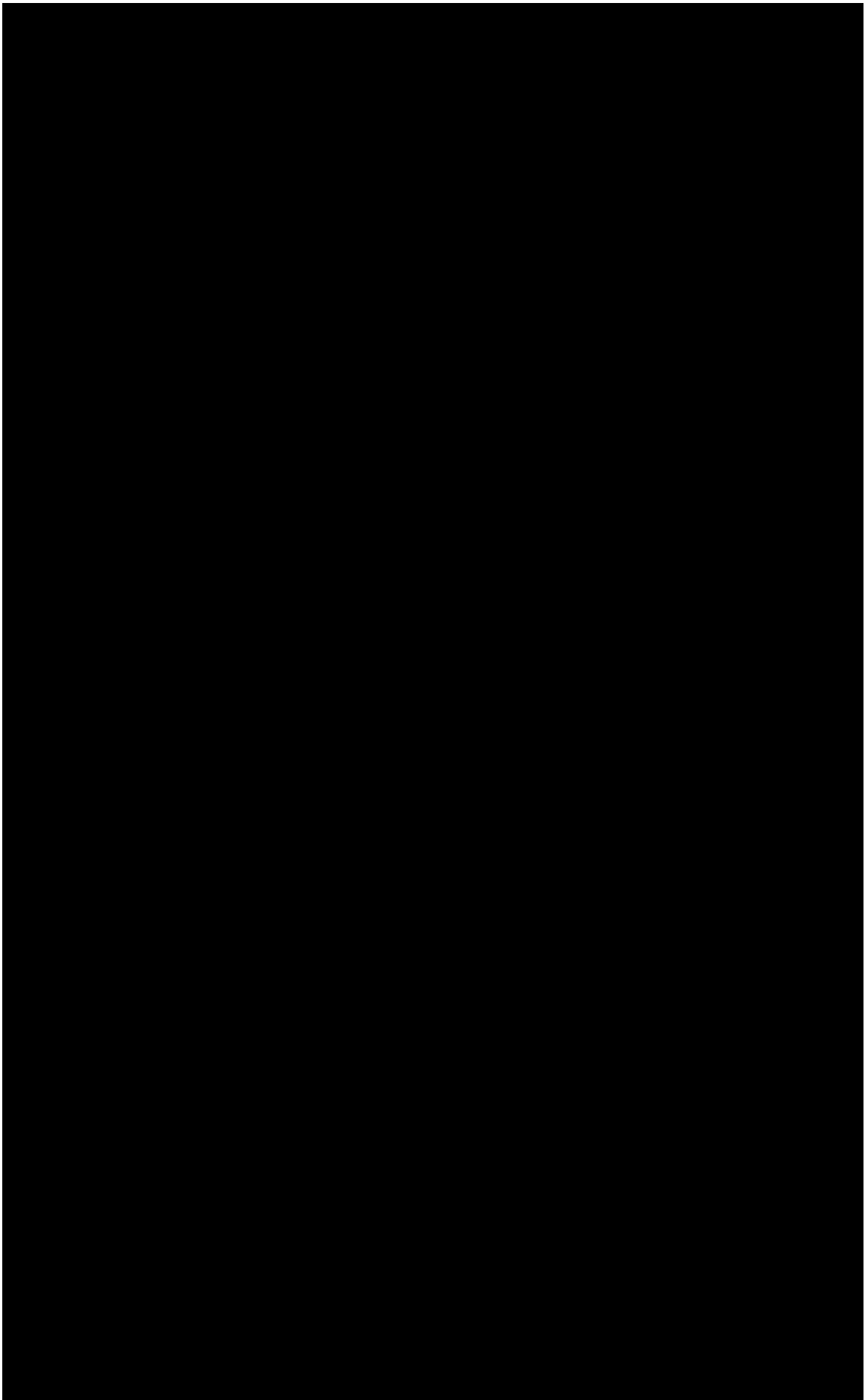
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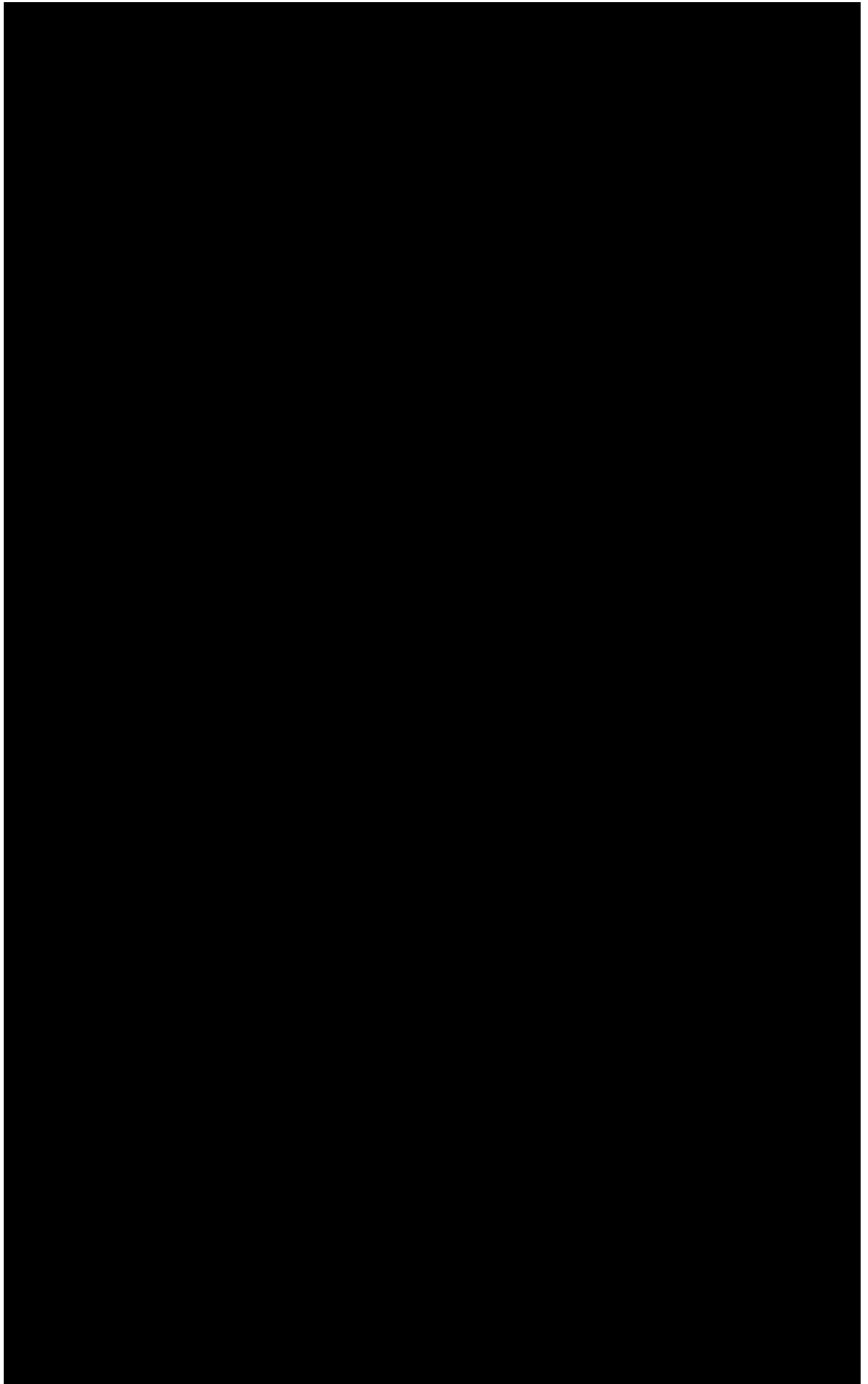
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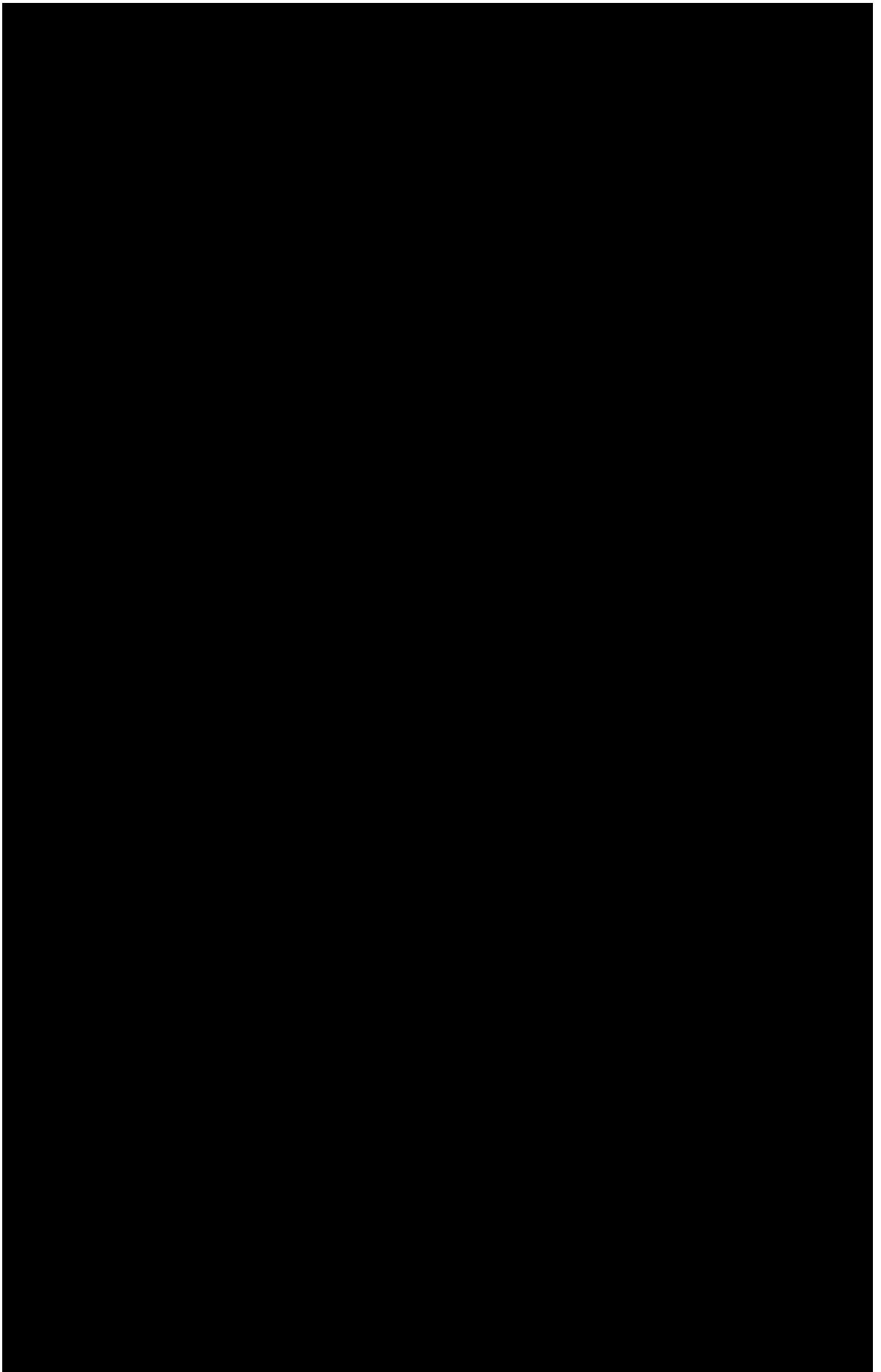
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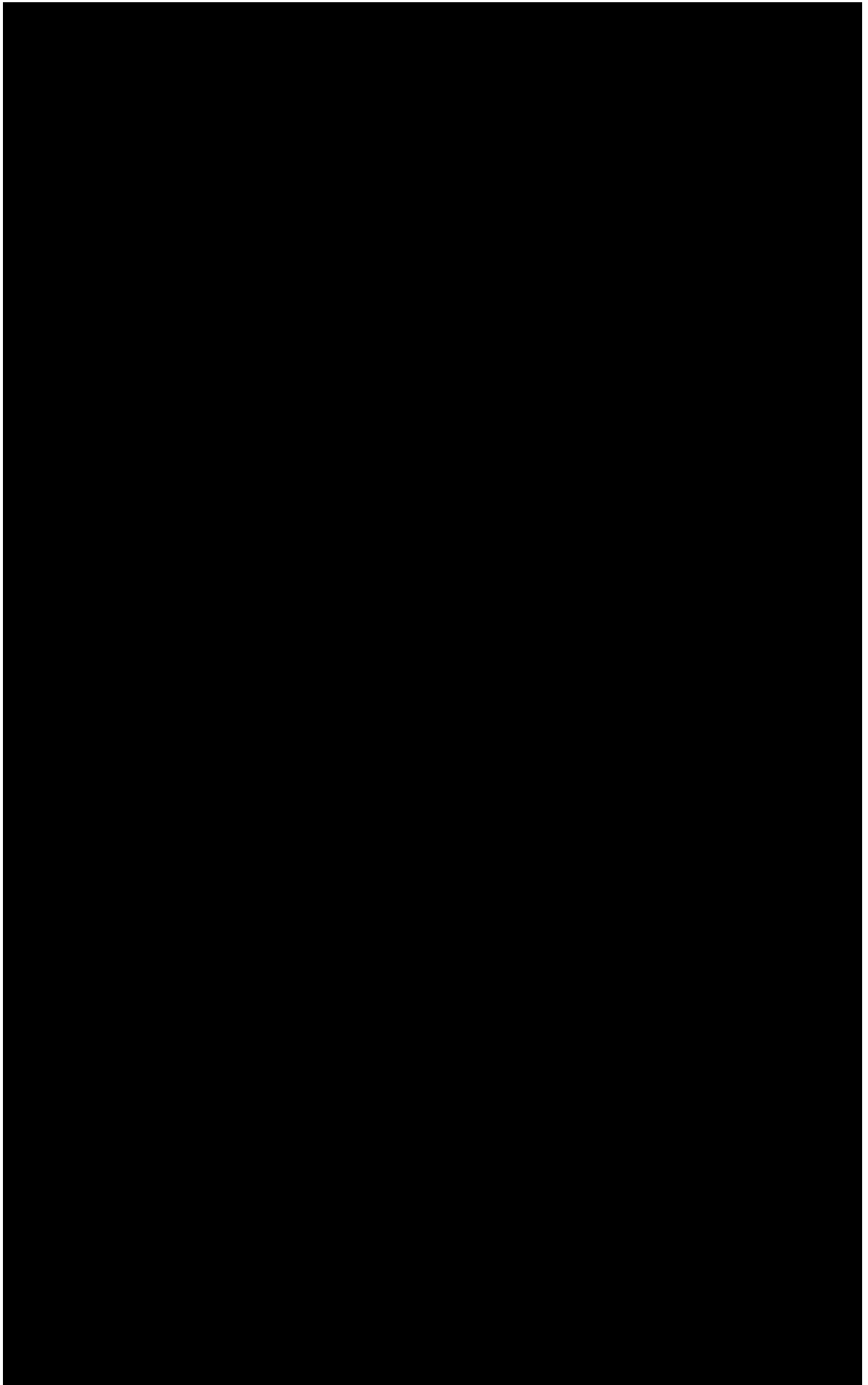
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22           Q.     And Mr. Dugger worked at the  
23     Indianapolis distribution center, is that right?  
24           A.     He did.

1 Q. And he was involved in the DEA audit in  
2 Indianapolis?

3 A. Yes.

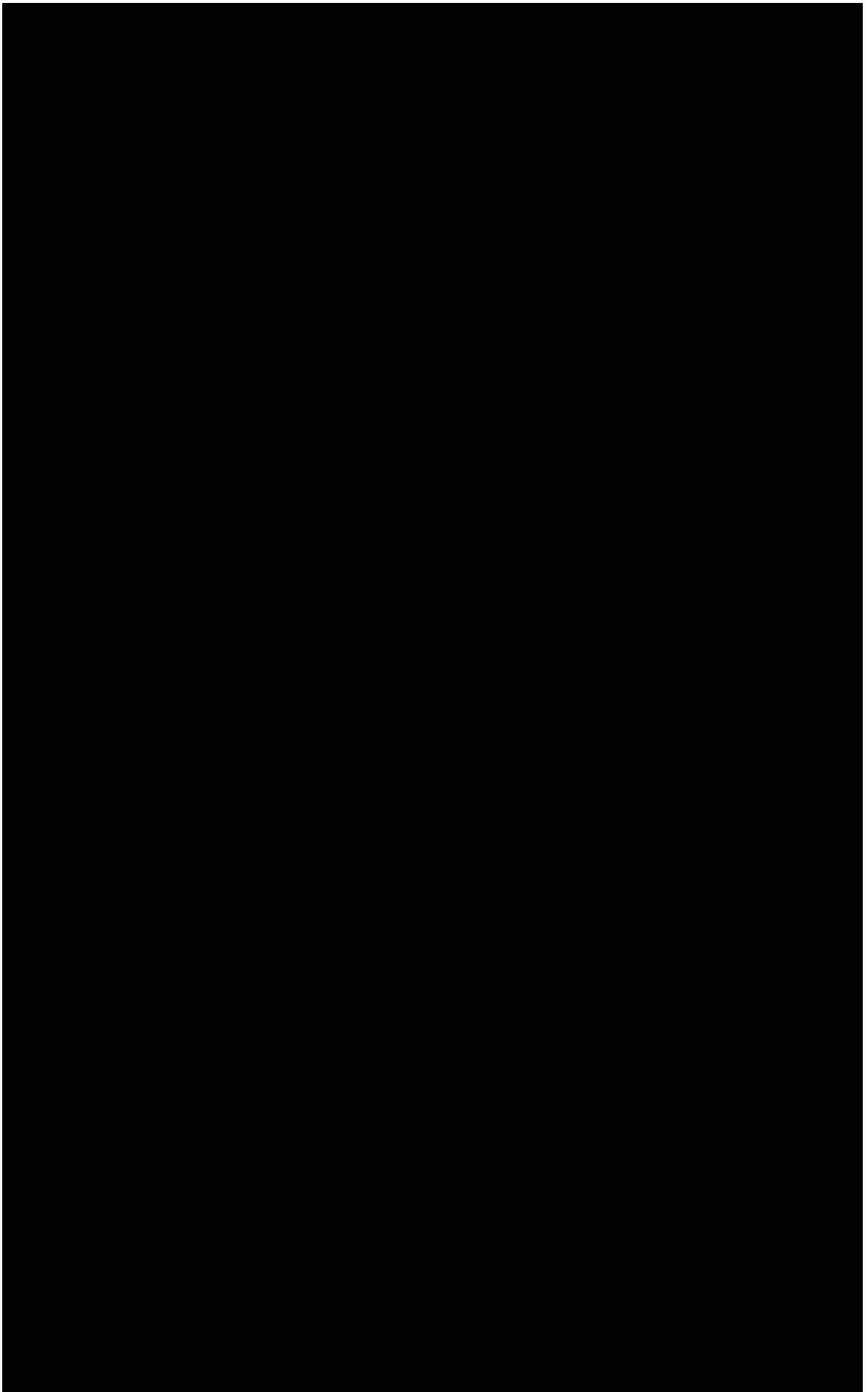
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17 Q. Yes.

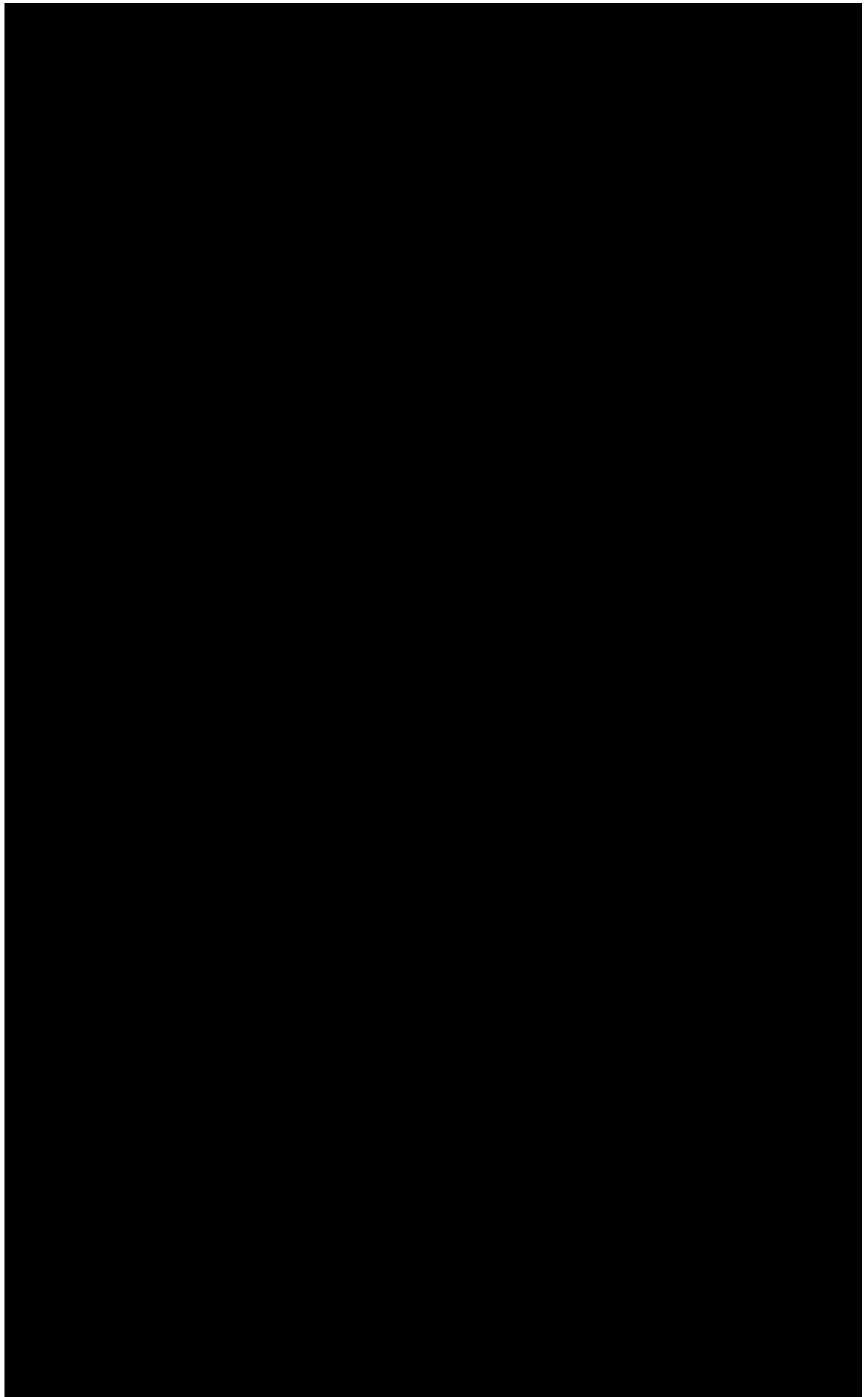
18 A. Denise Byers is my current loss  
19 prevention manager, but she worked in -- well, I  
20 can't say for sure. I think she worked in  
21 Lumberton in 2010.

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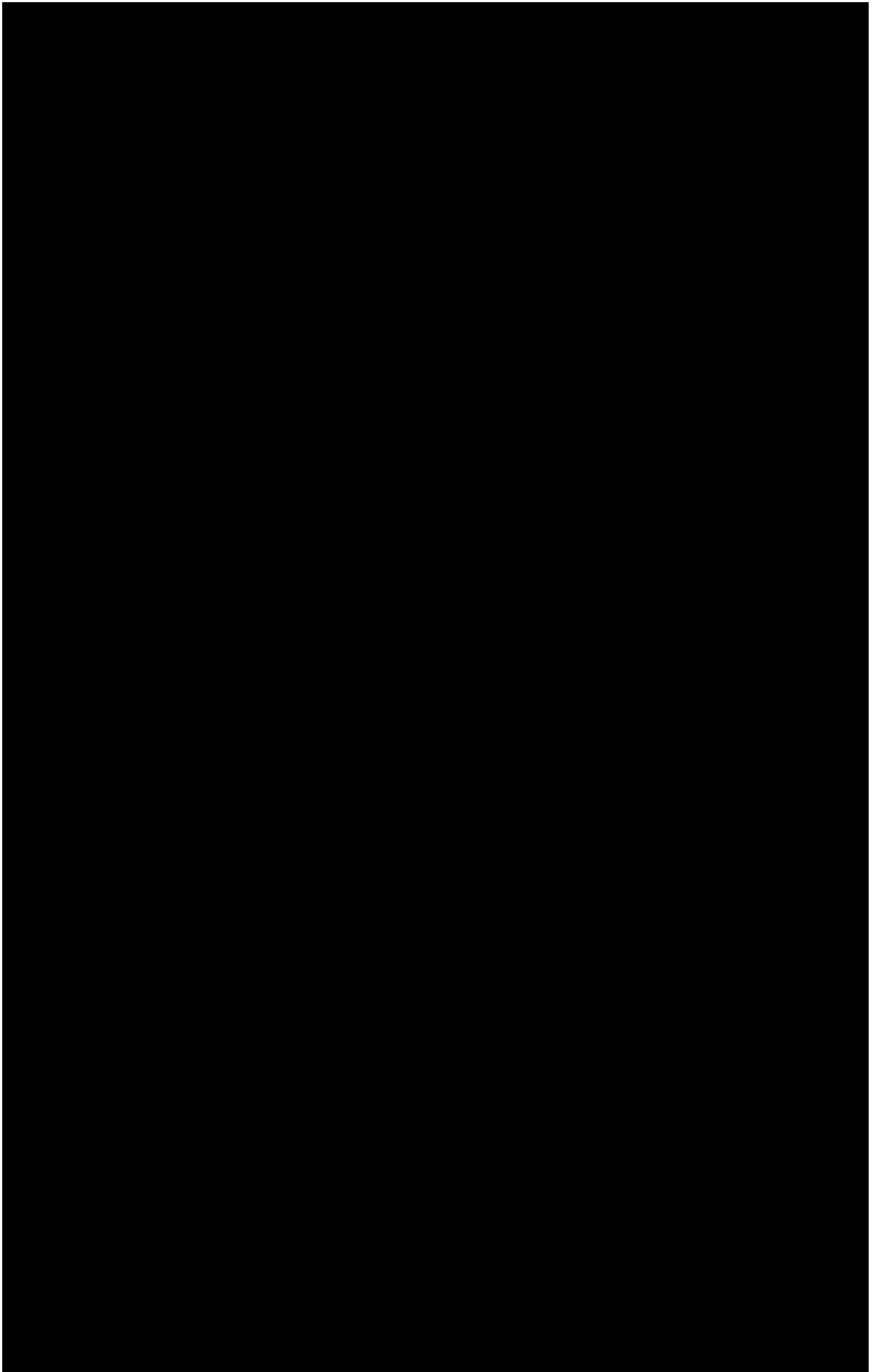
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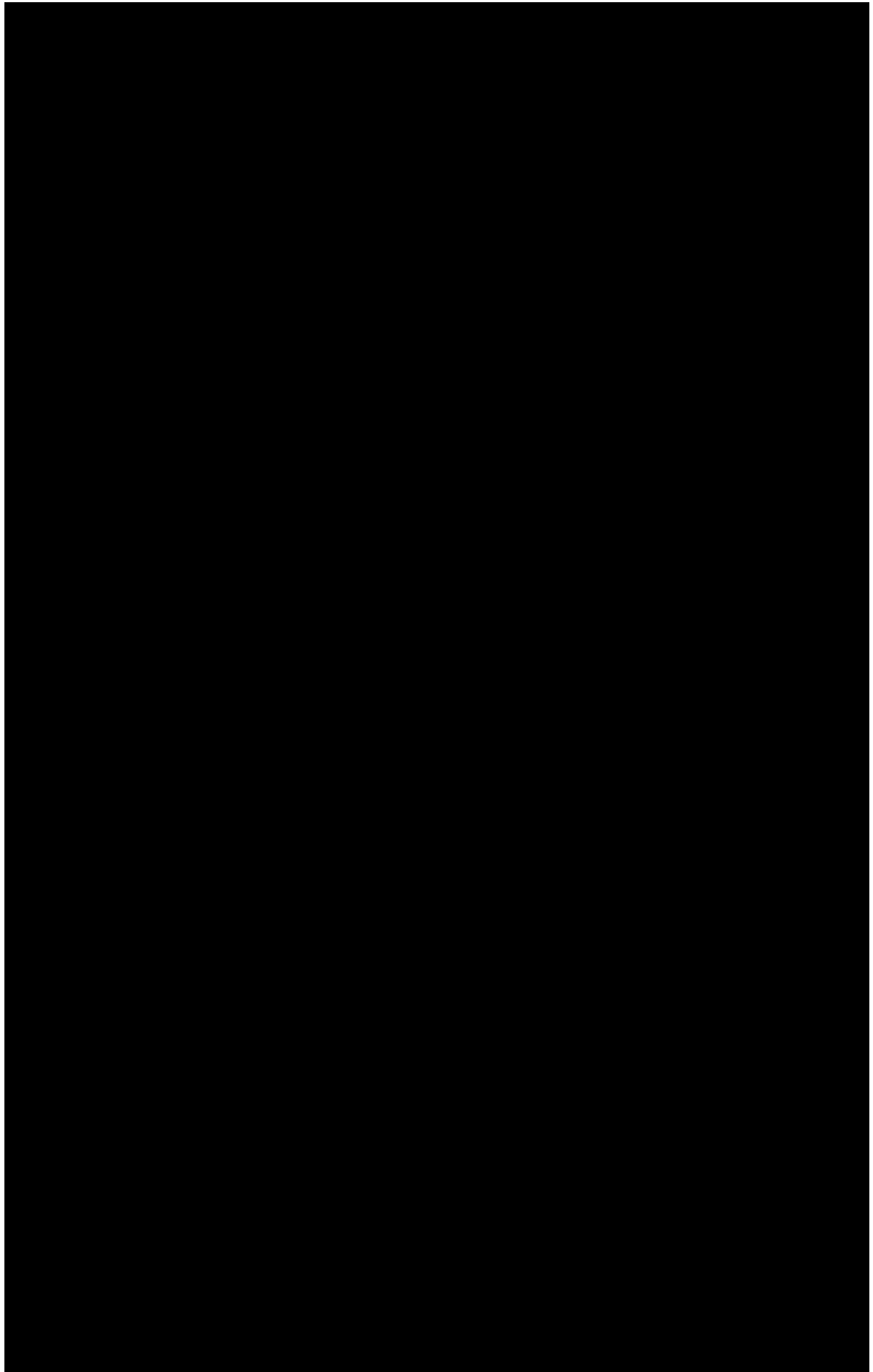
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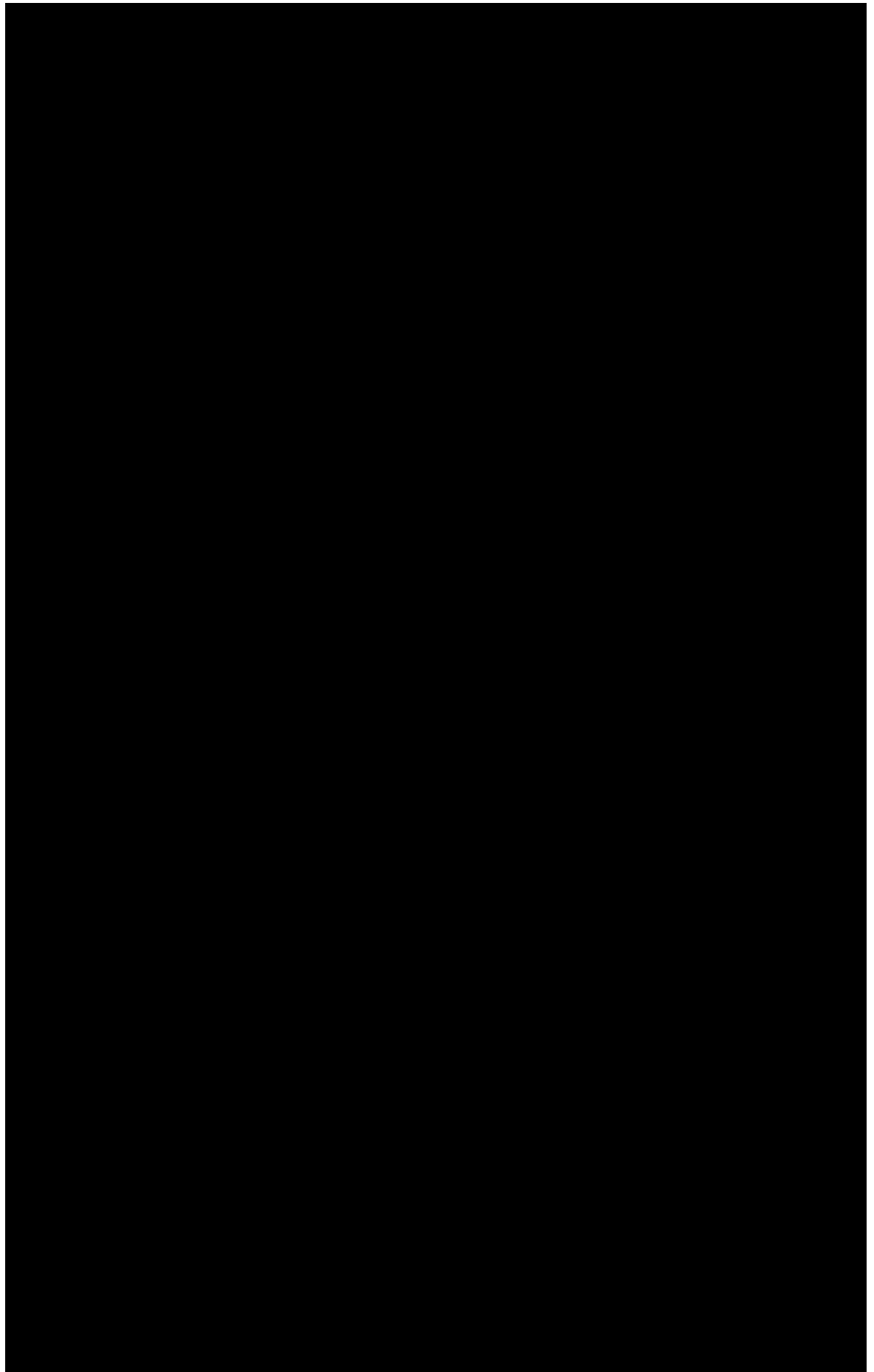
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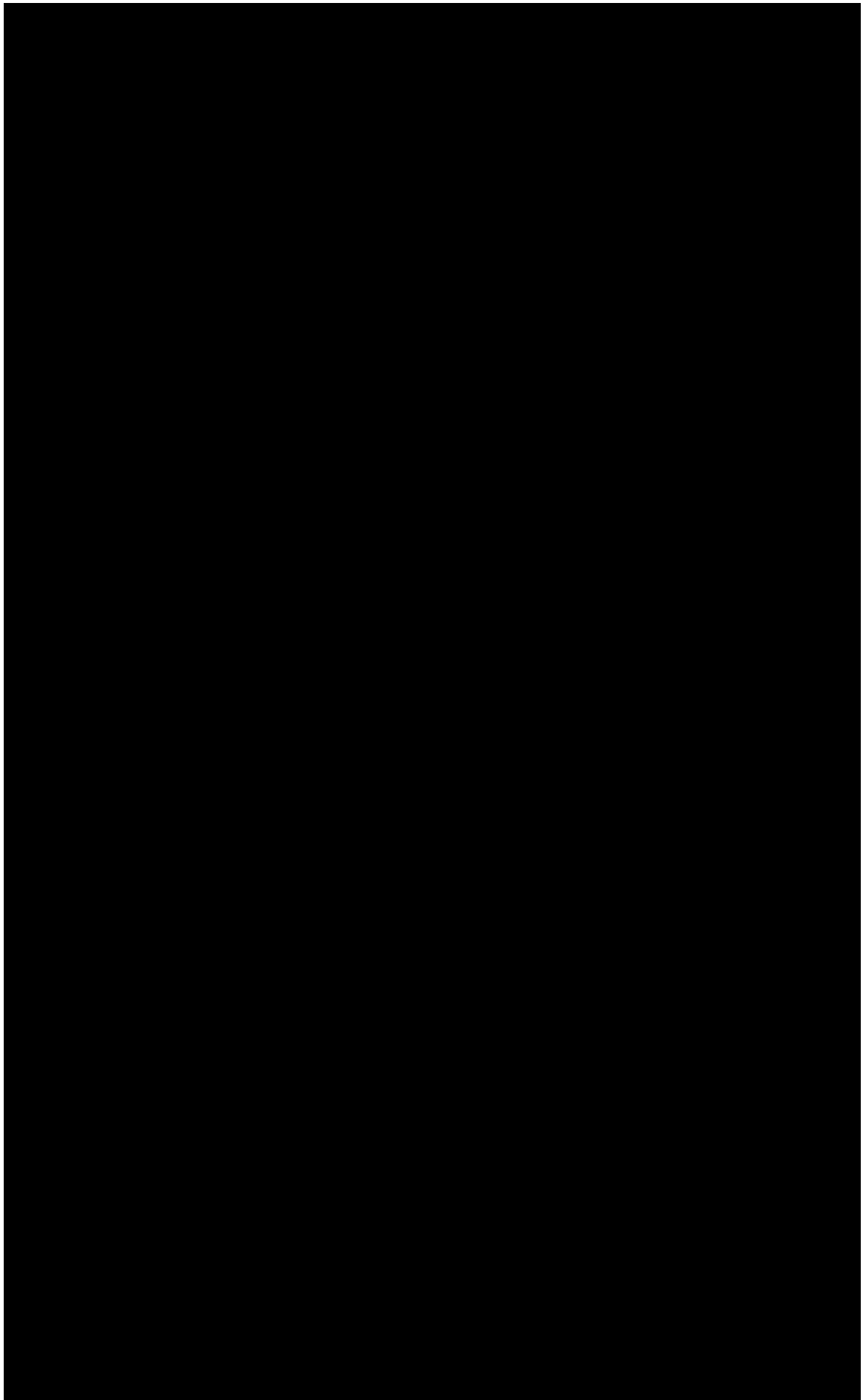
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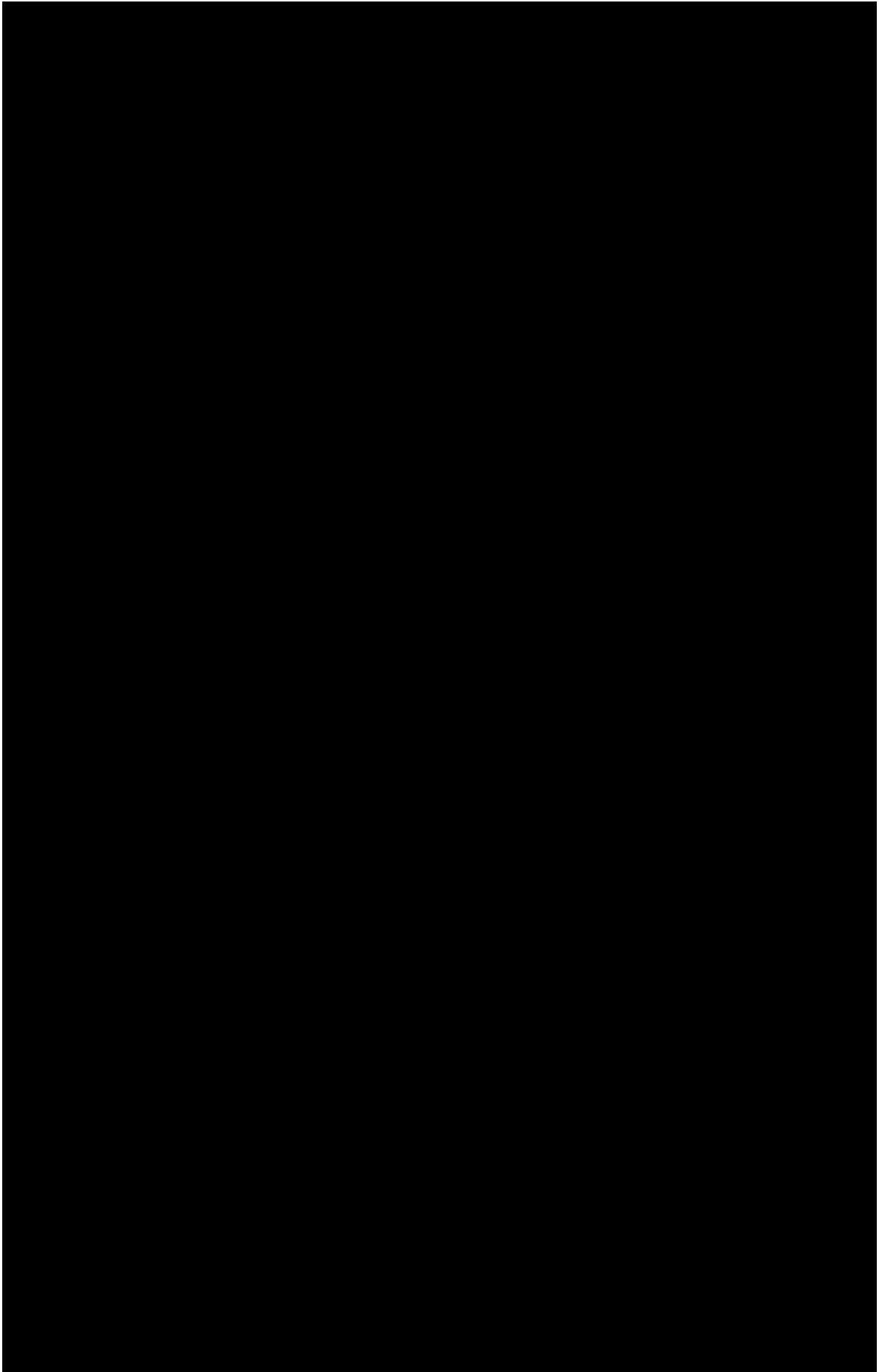
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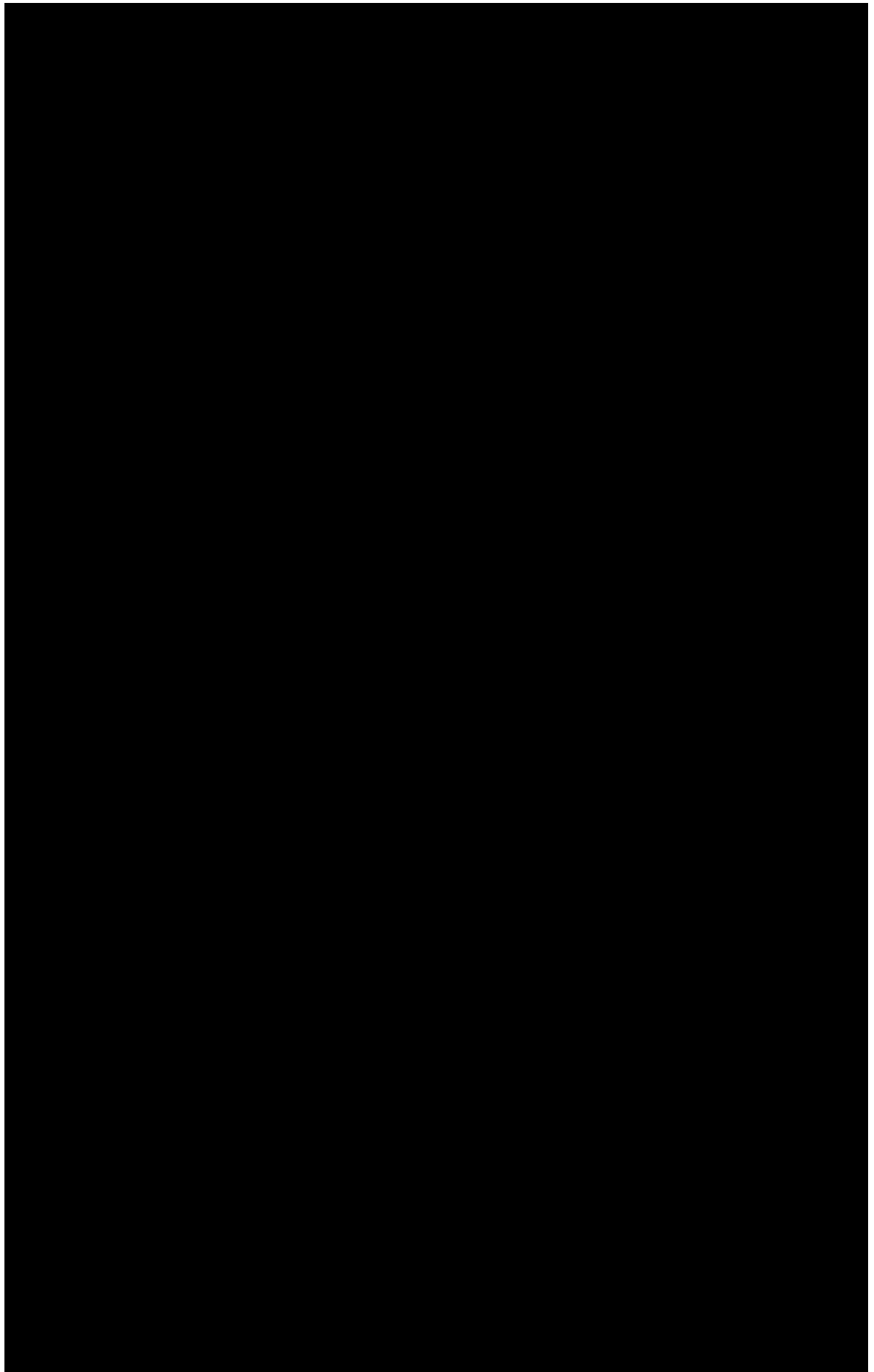
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2 Q. If we go back to Exhibit 12 and we look  
3 at 88997.

4 MR. HYNES: Michael, is the number 88997?

5 MR. ELSNER: Yes.

6 BY MR. ELSNER:

7 Q. It's actually, yeah, 88997. Under  
8 Section 4, "Item Review Report."

9 A. Sorry. I don't see that. 8895.

10 MR. HYNES: 88997. VIII-7.

11 BY THE WITNESS:

12 A. 88997. Okay.

13 BY MR. ELSNER:

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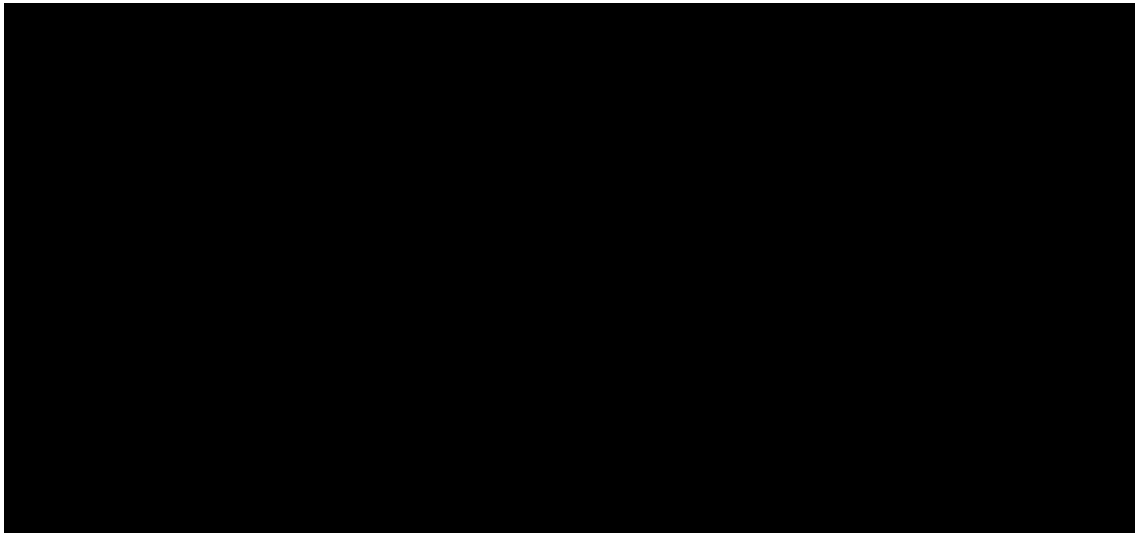
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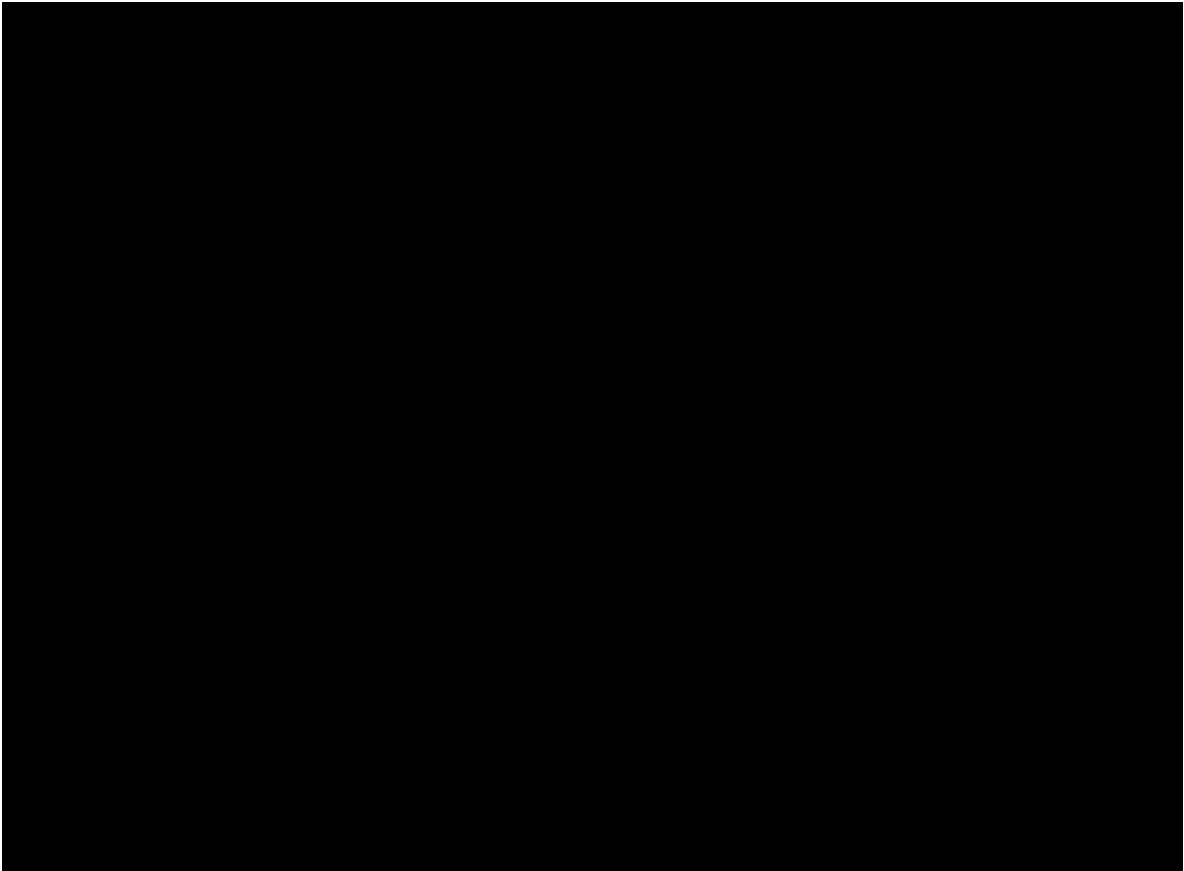
MR. HYNES: Objection to form. Let me see  
that document again. What page was that on?

MR. ELSNER: 75301.

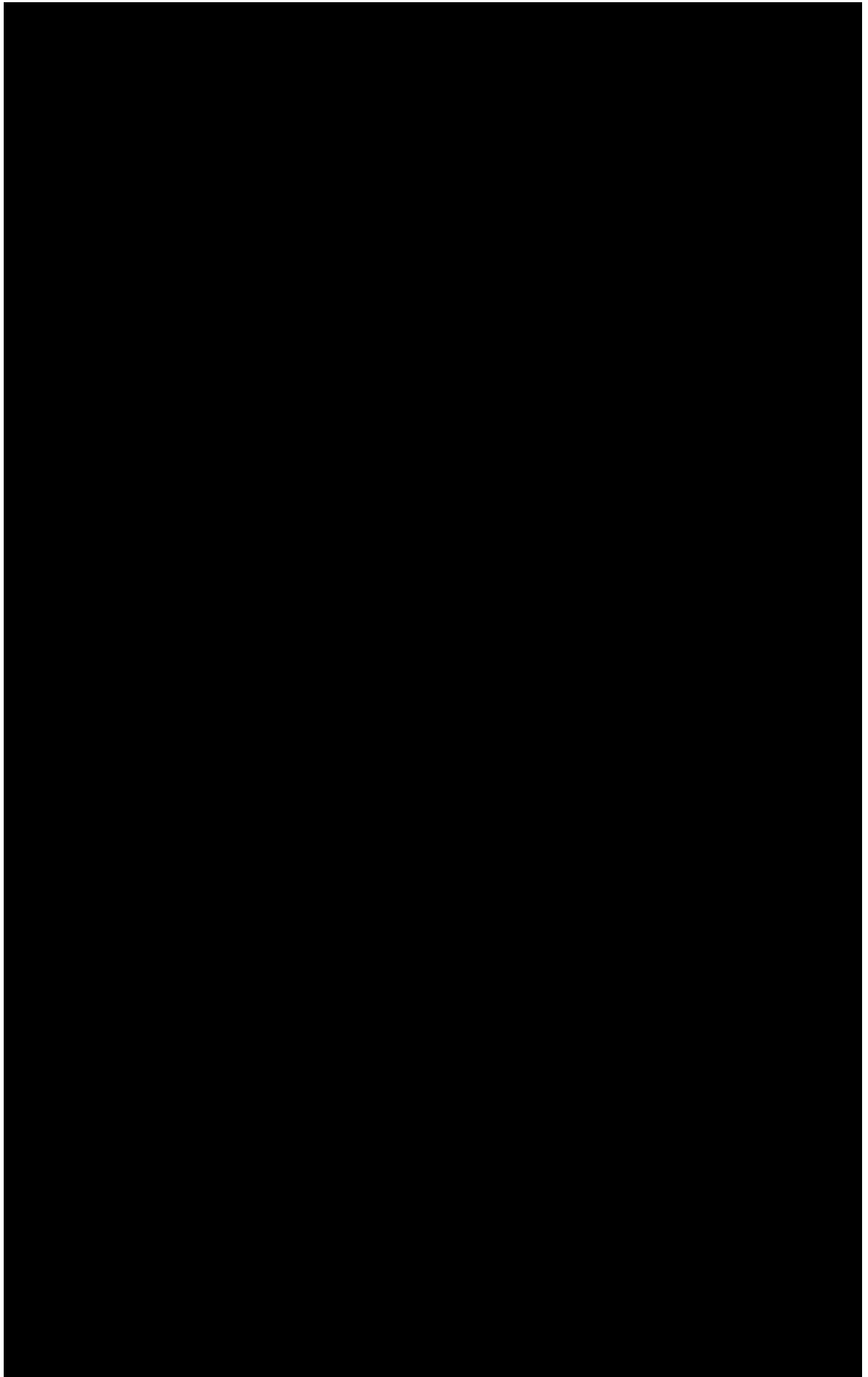
MR. HYNES: No. 75309.

MR. ELSNER: It's actually 75306.

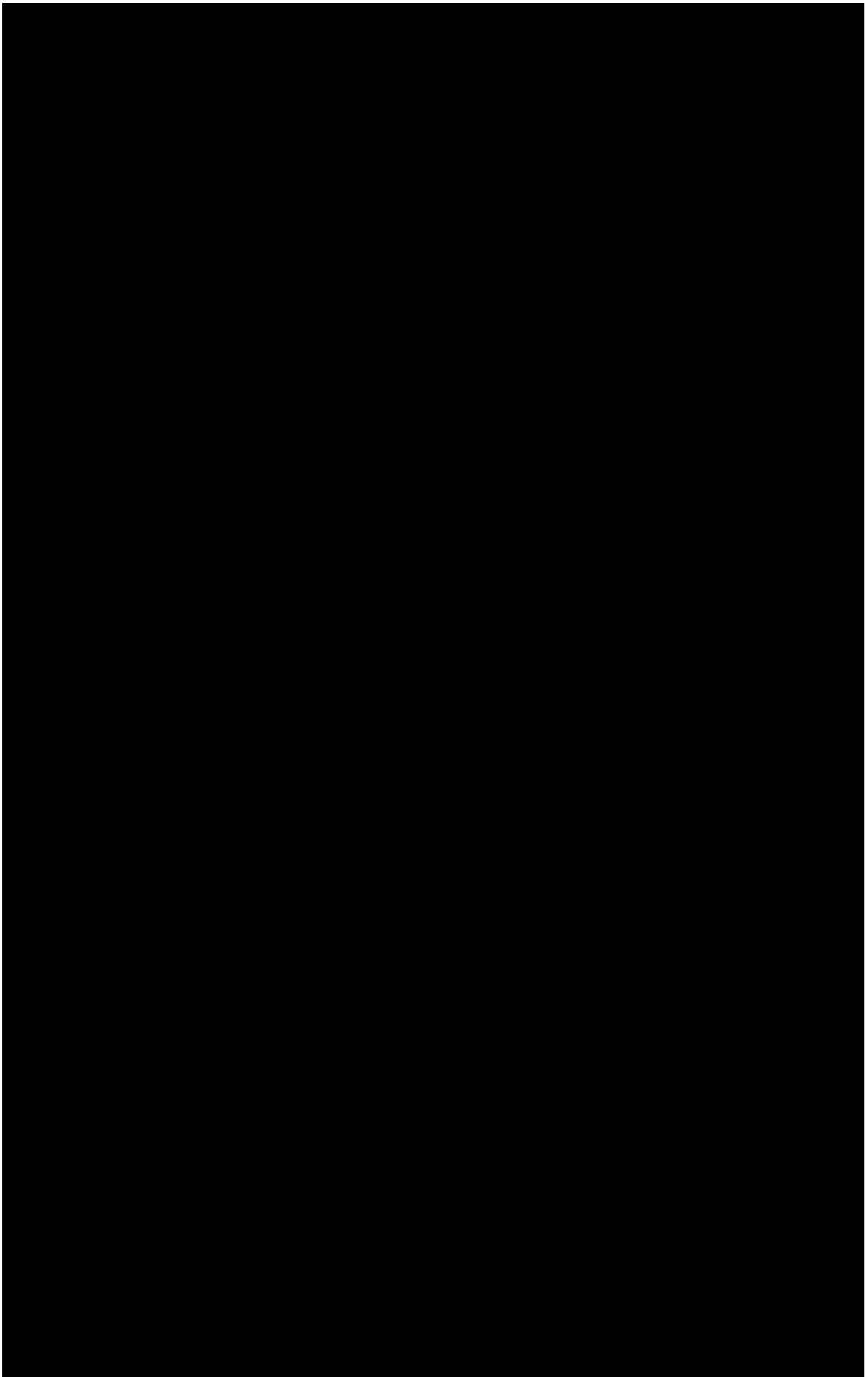
BY MR. ELSNER:



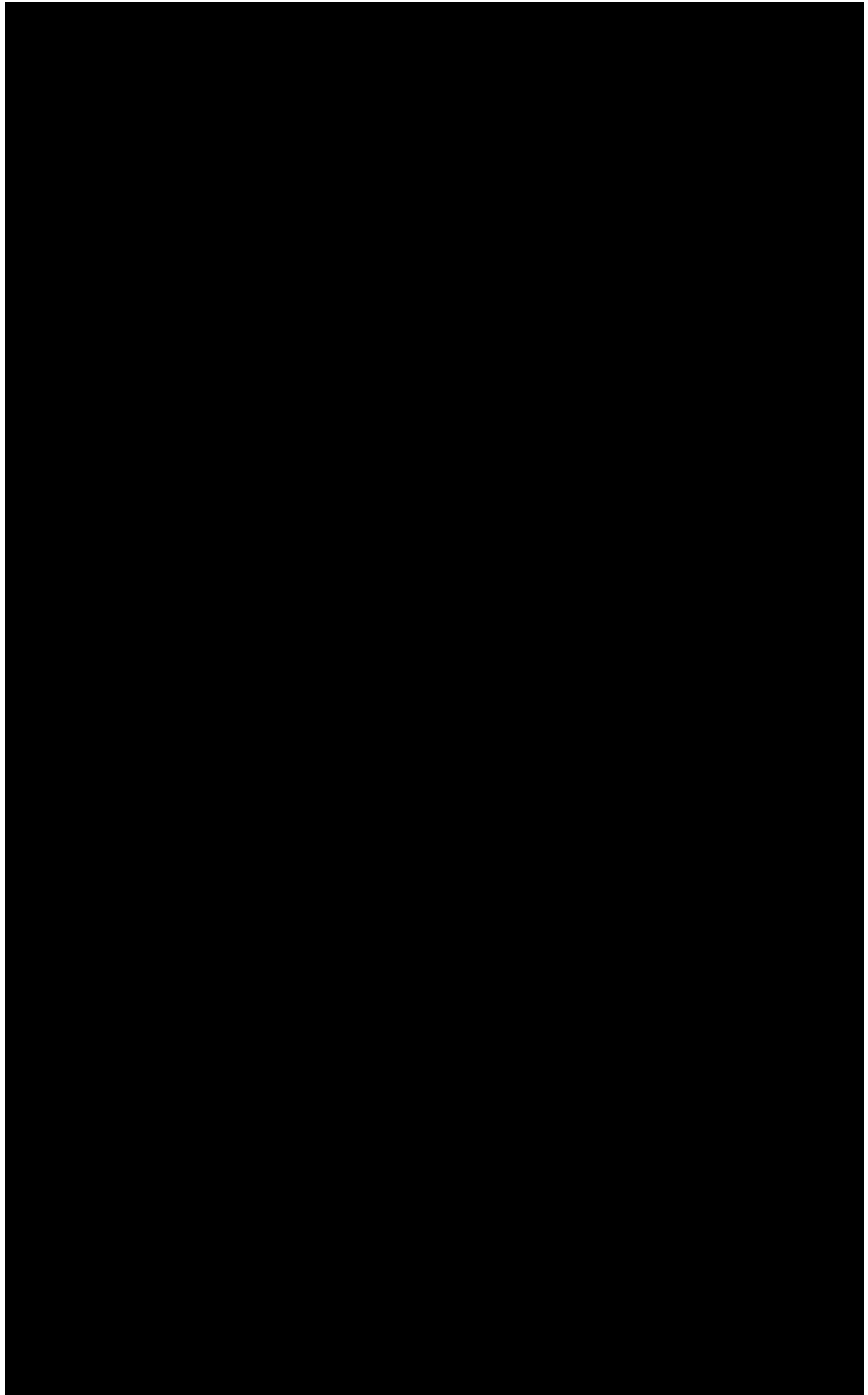
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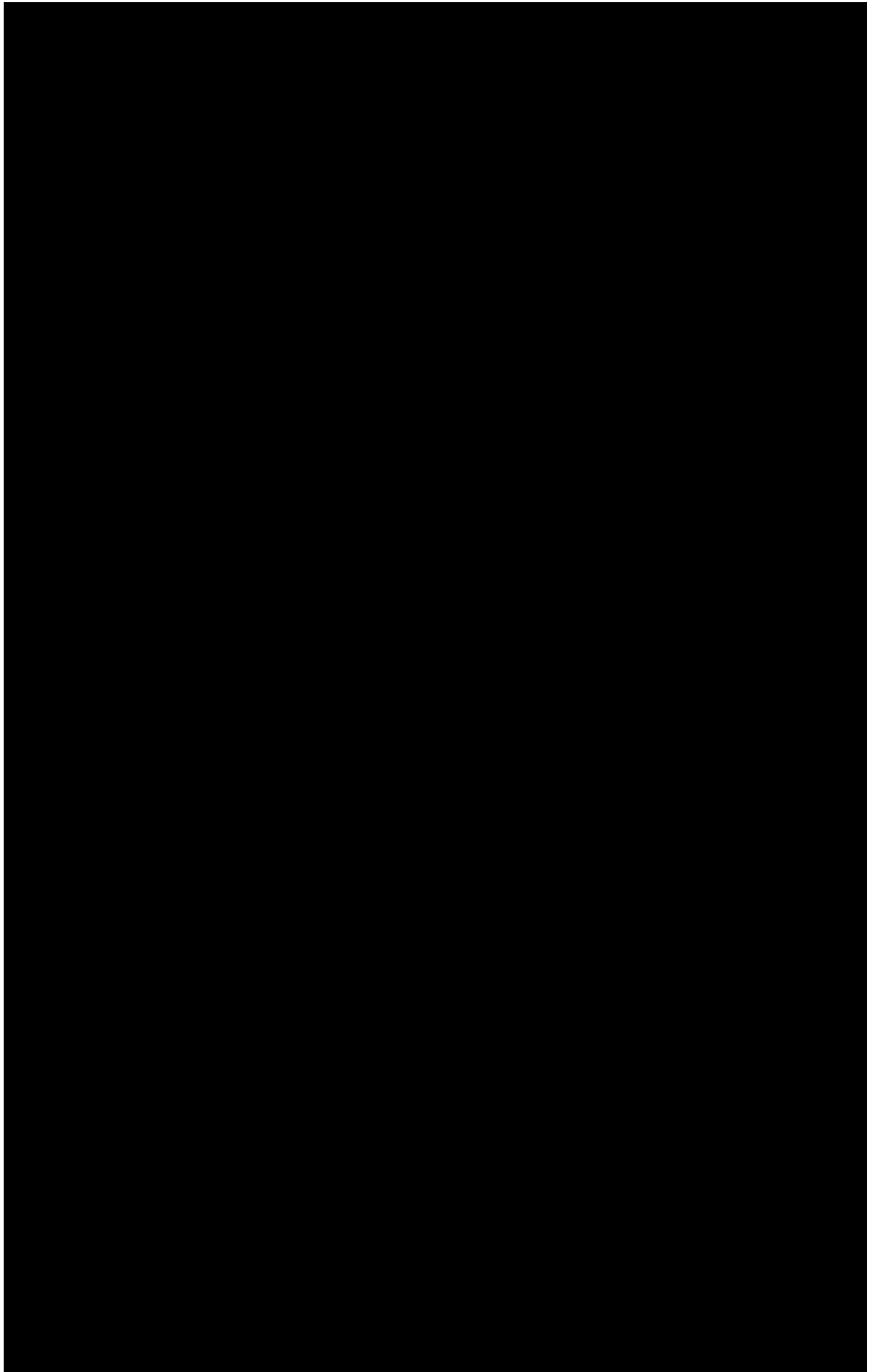
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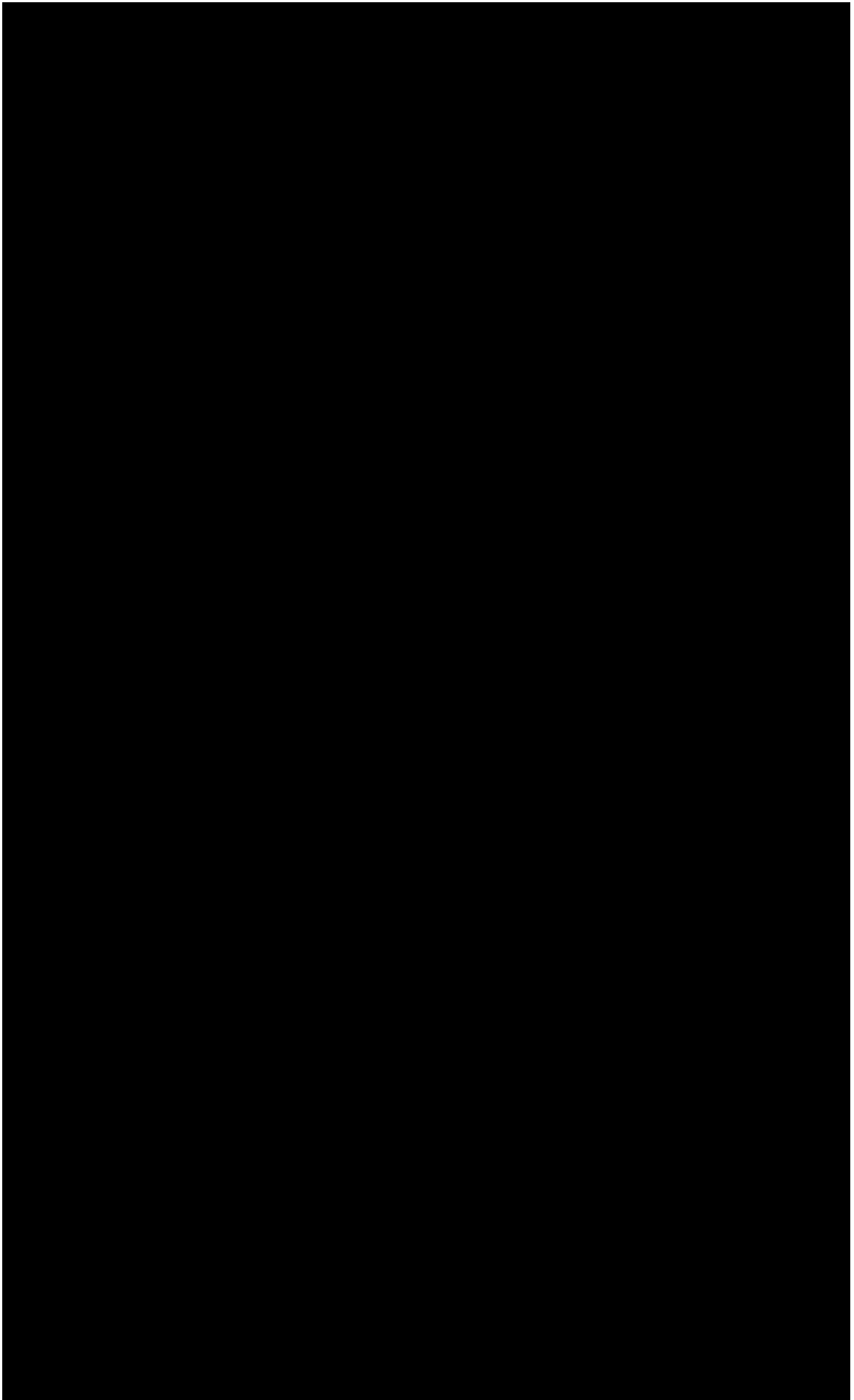
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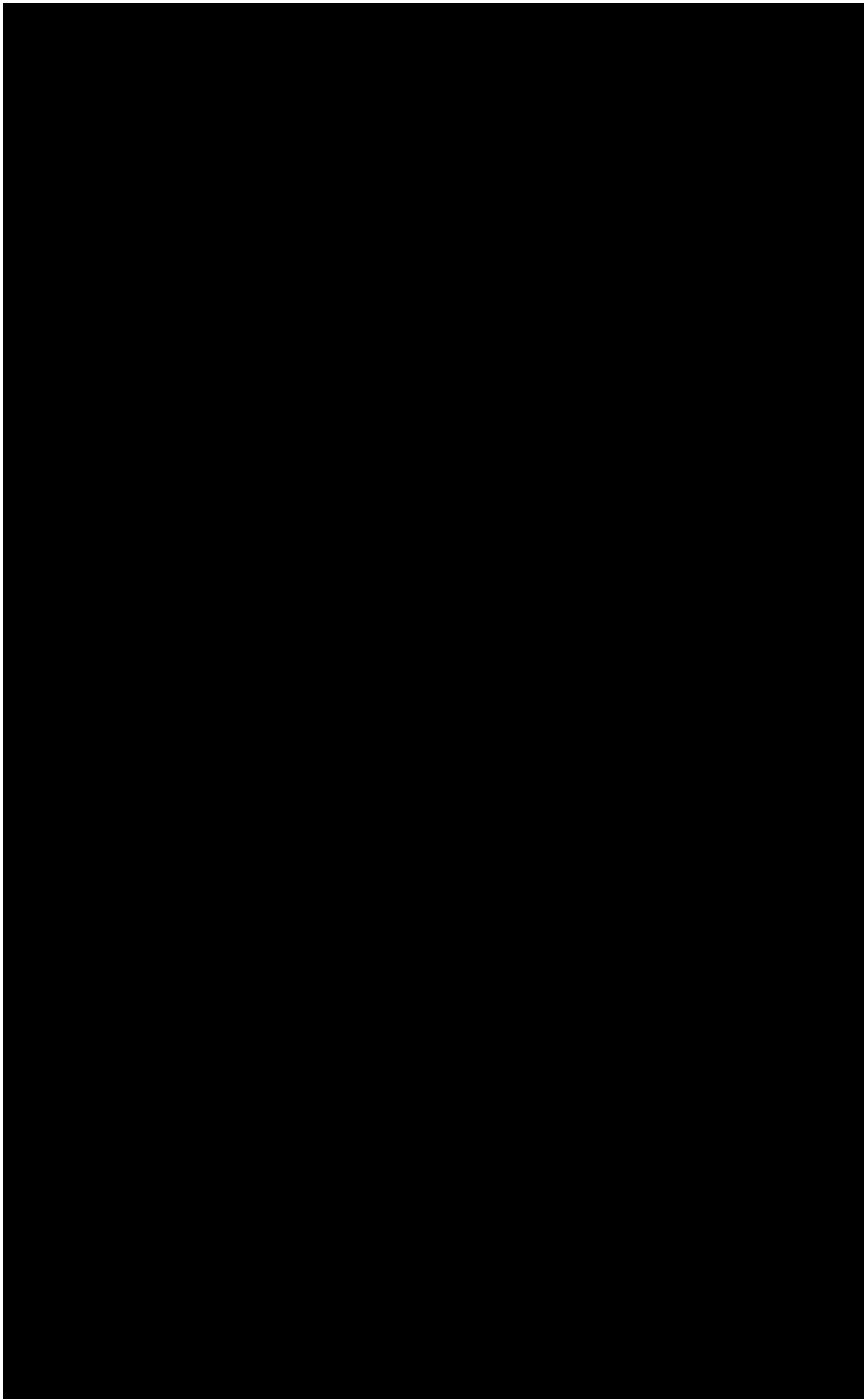
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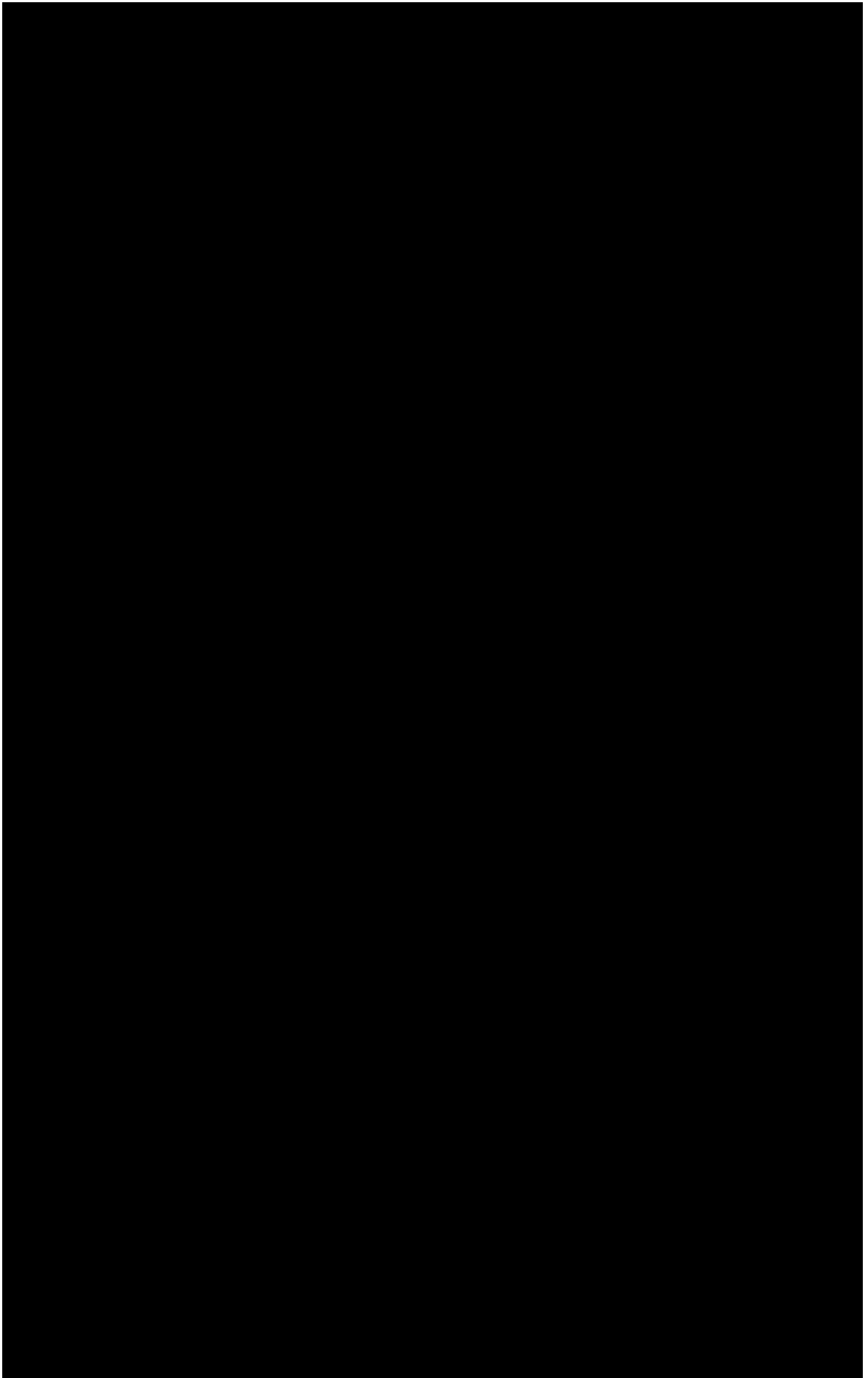
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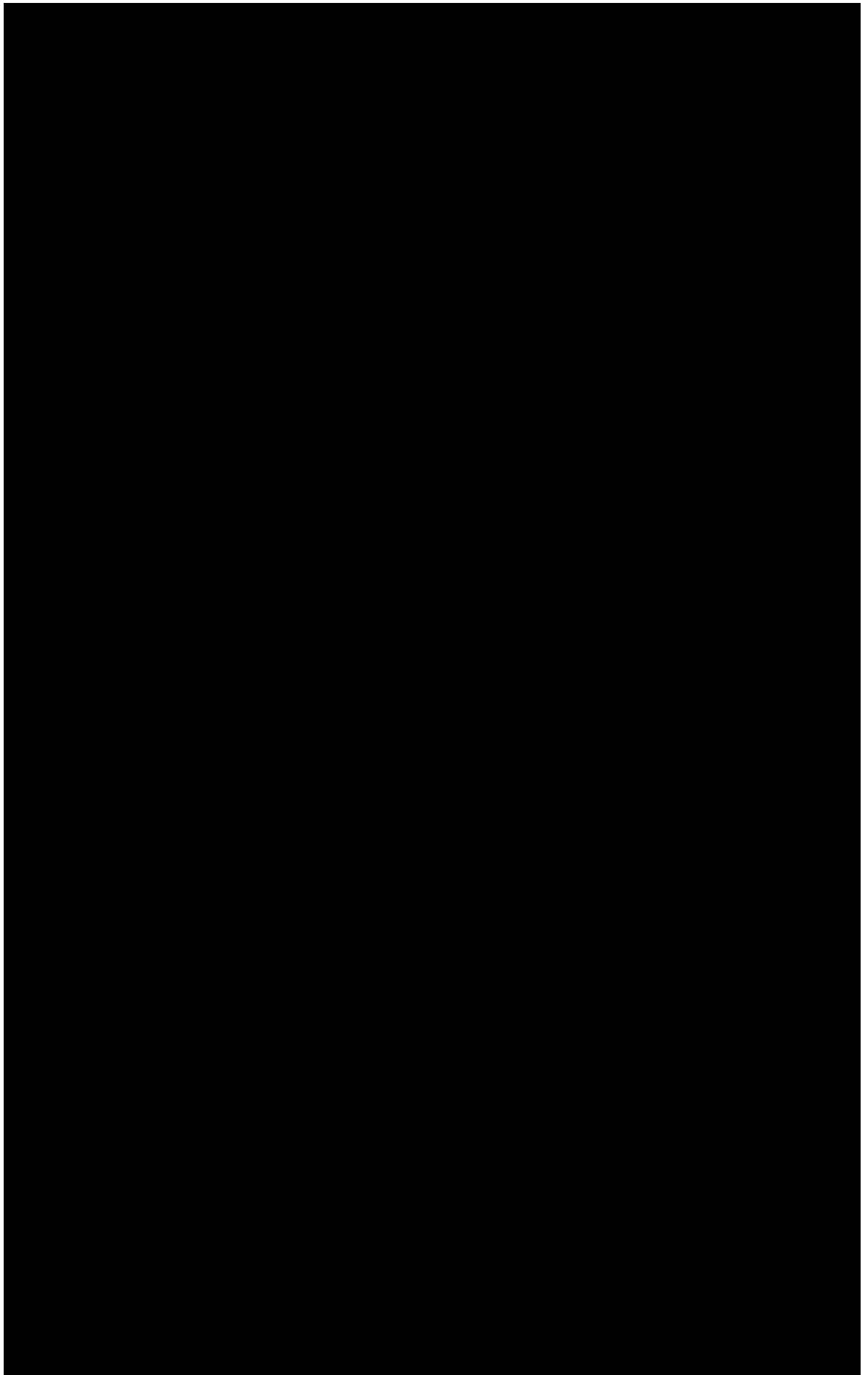
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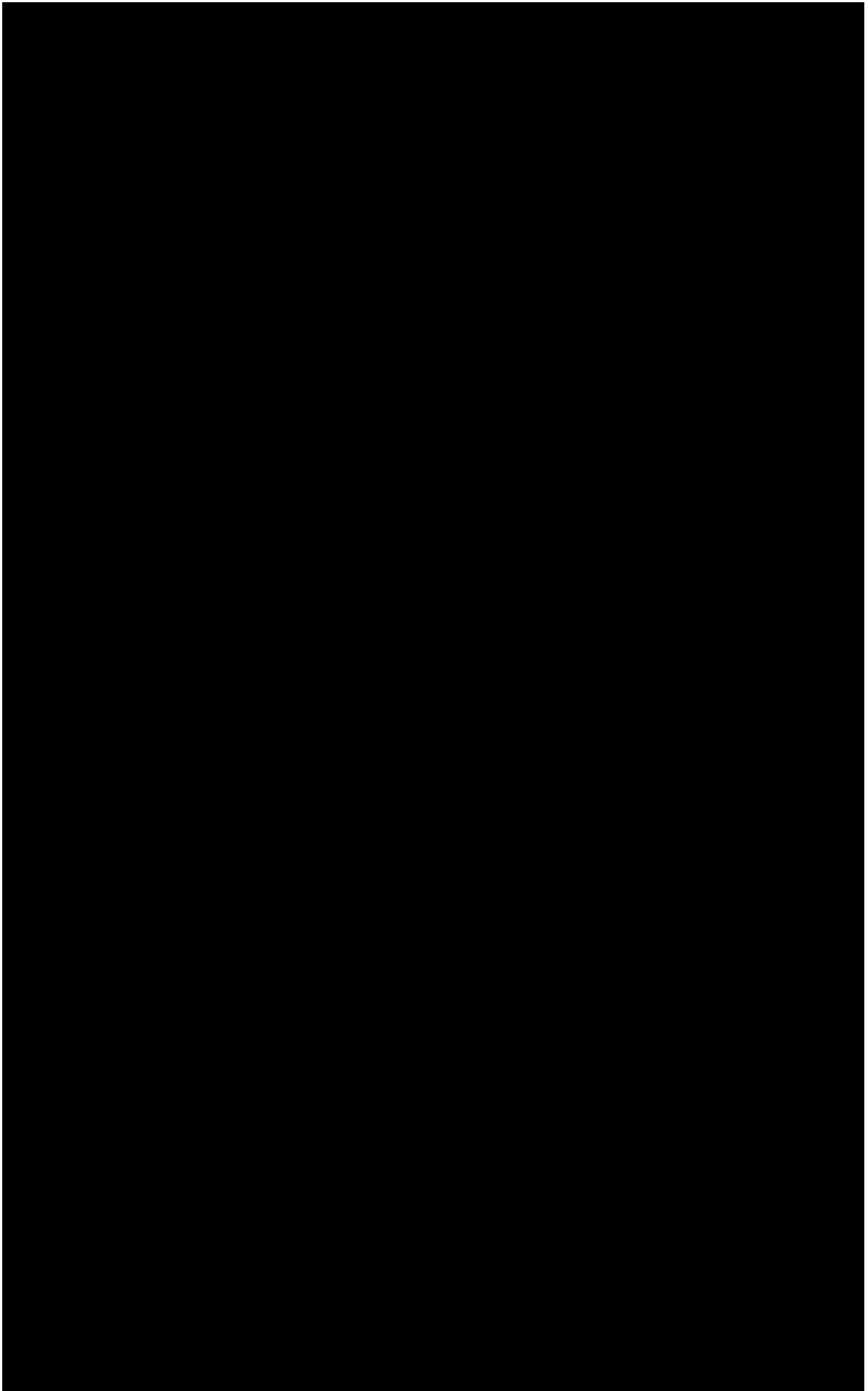
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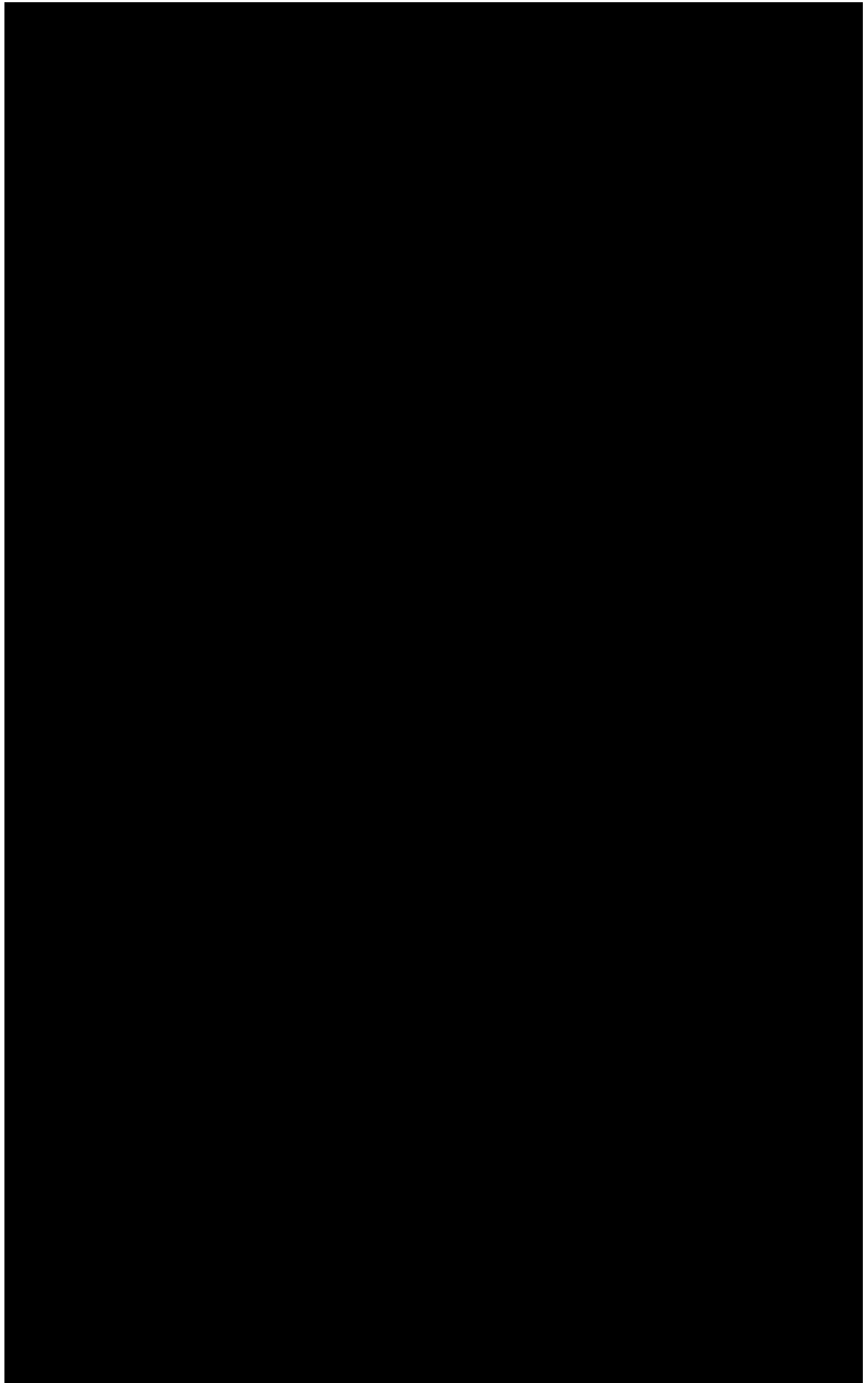
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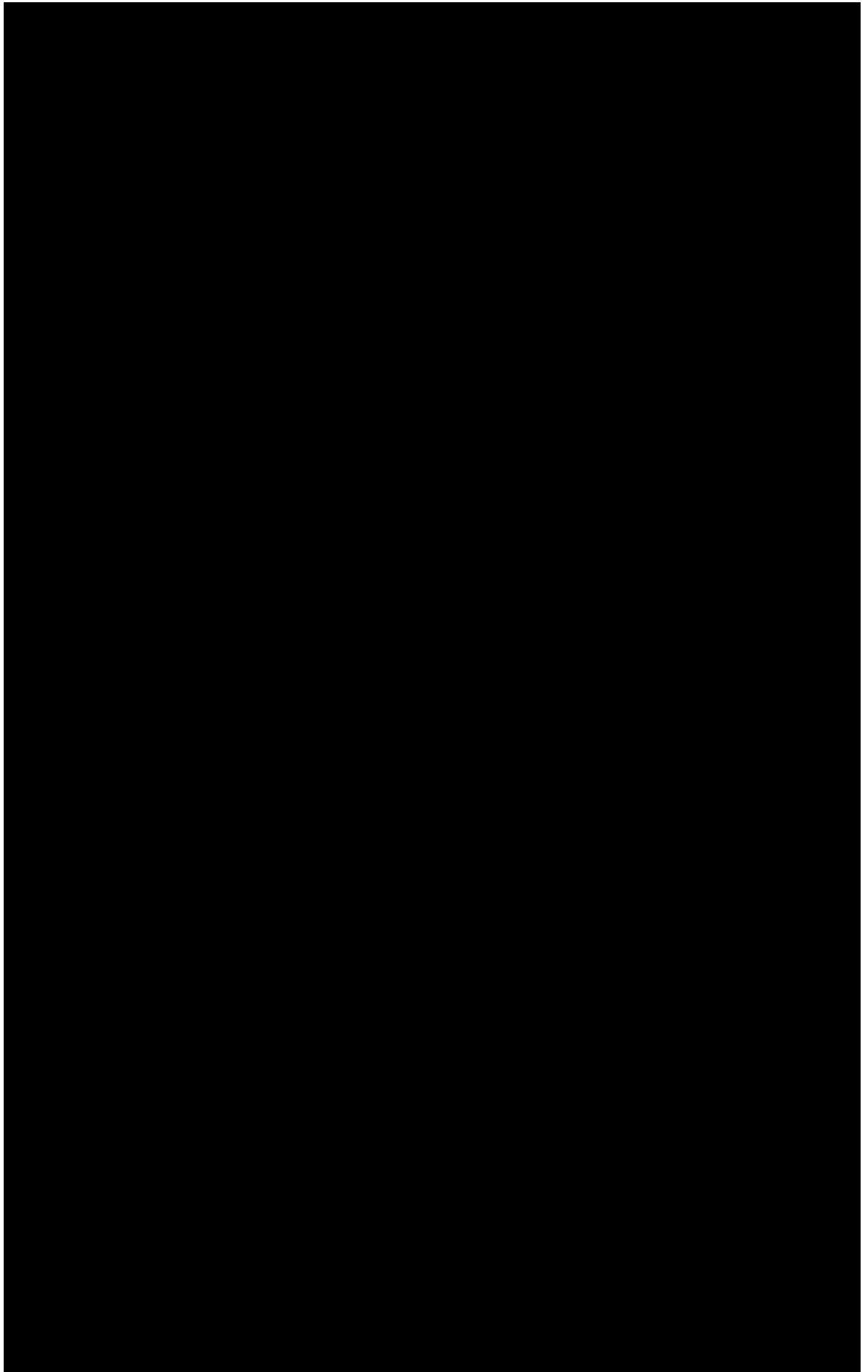
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MR. ELSNER: Why don't we go off the record  
for a couple minutes.

6

THE VIDEOGRAPHER: We are going off the record  
at 11:01.

8

(WHEREUPON, a recess was had

9

from 11:01 to 11:13 a.m.)

10

THE VIDEOGRAPHER: We're back on the record at  
11:13.

12

BY MR. ELSNER:

13

Q. Mr. Nicastro, I'm going to show you what  
I've marked as Exhibit 15.

15

MR. ELSNER: Can I have that? Sorry. I gave  
you my version.

17

(WHEREUPON, a certain document was

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marked as CVS-Nicastro-015: 1/5/11

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e-mail string with attachment;

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CVS-MDLT1-000076236 - 000076238.)

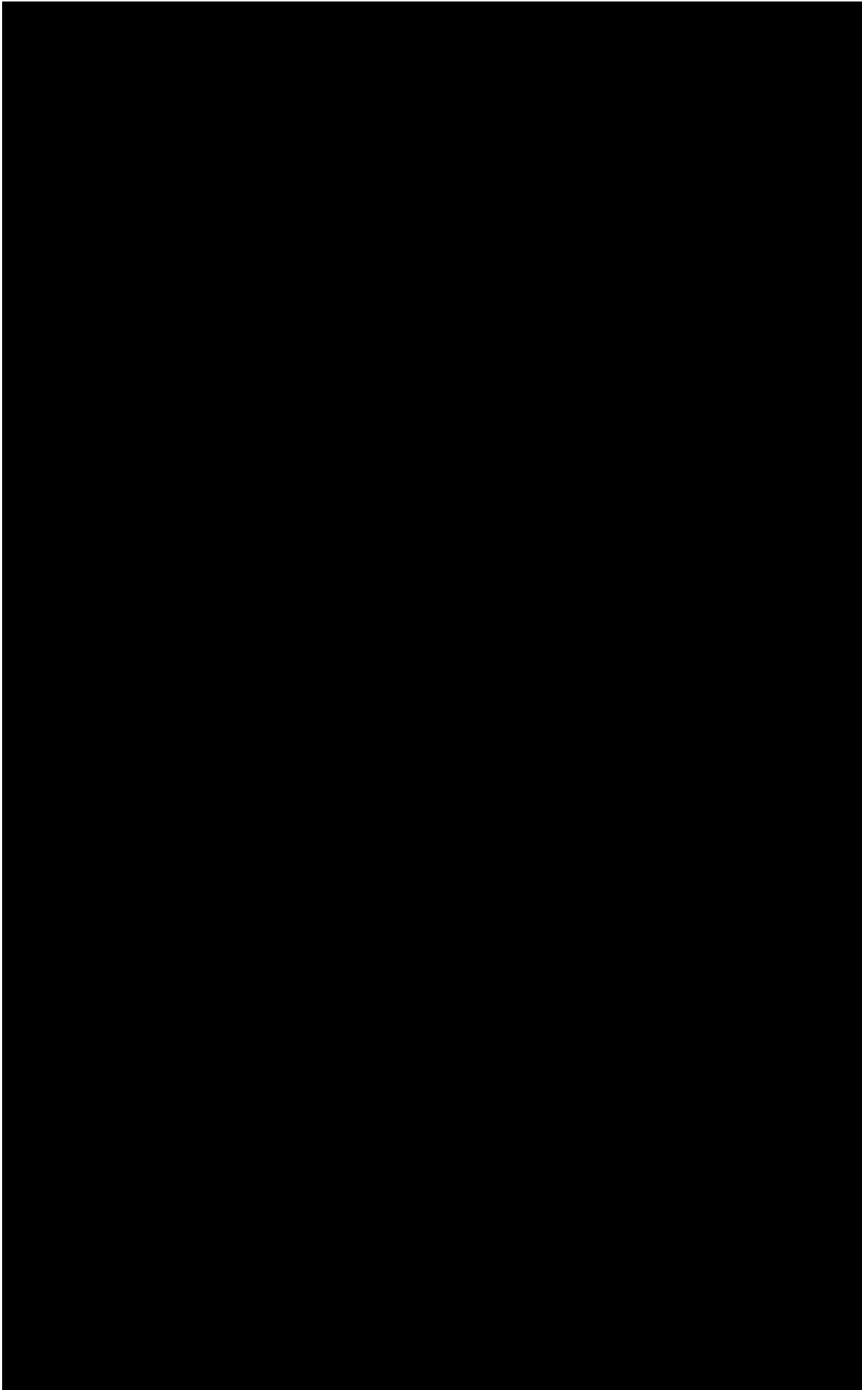
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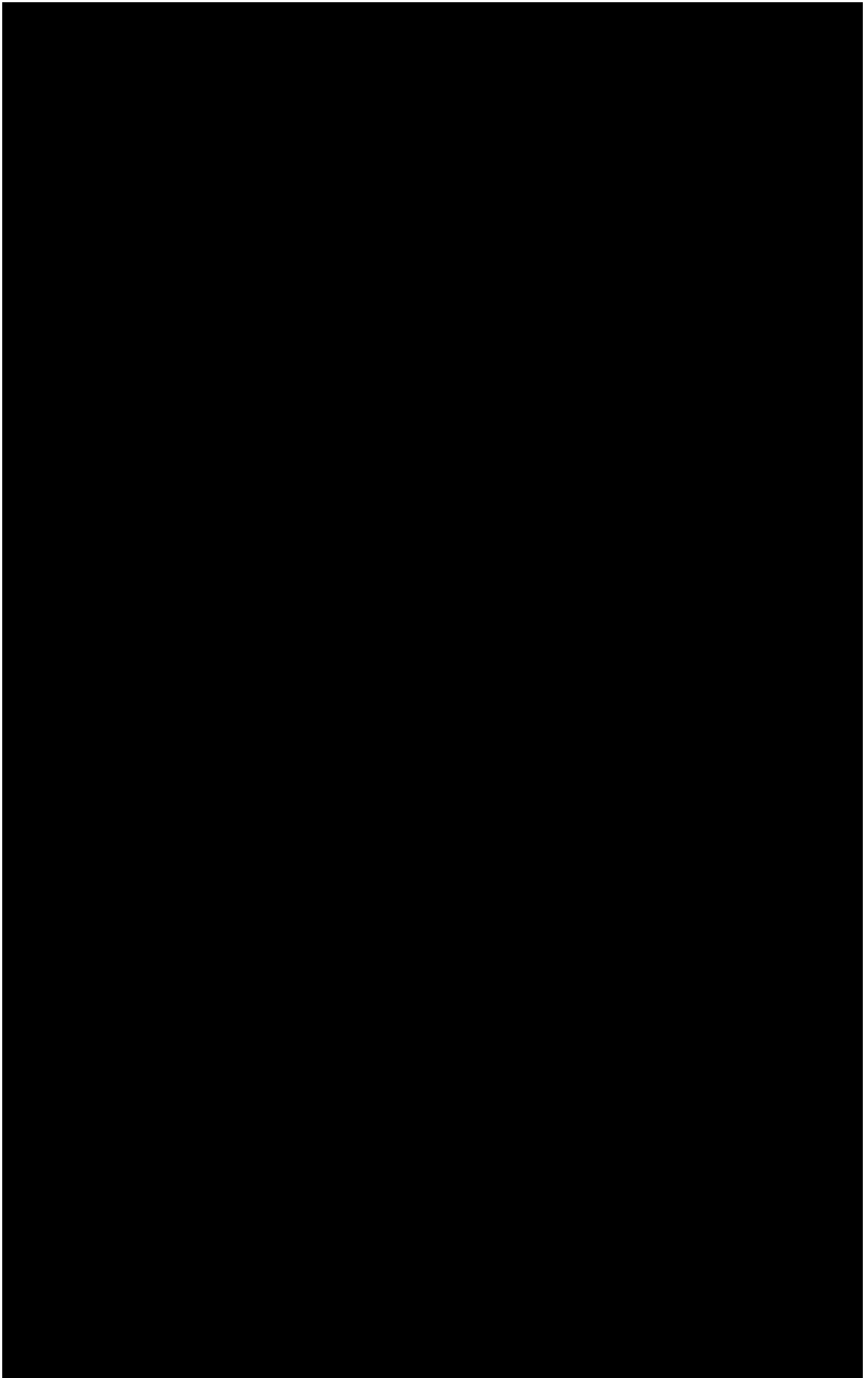
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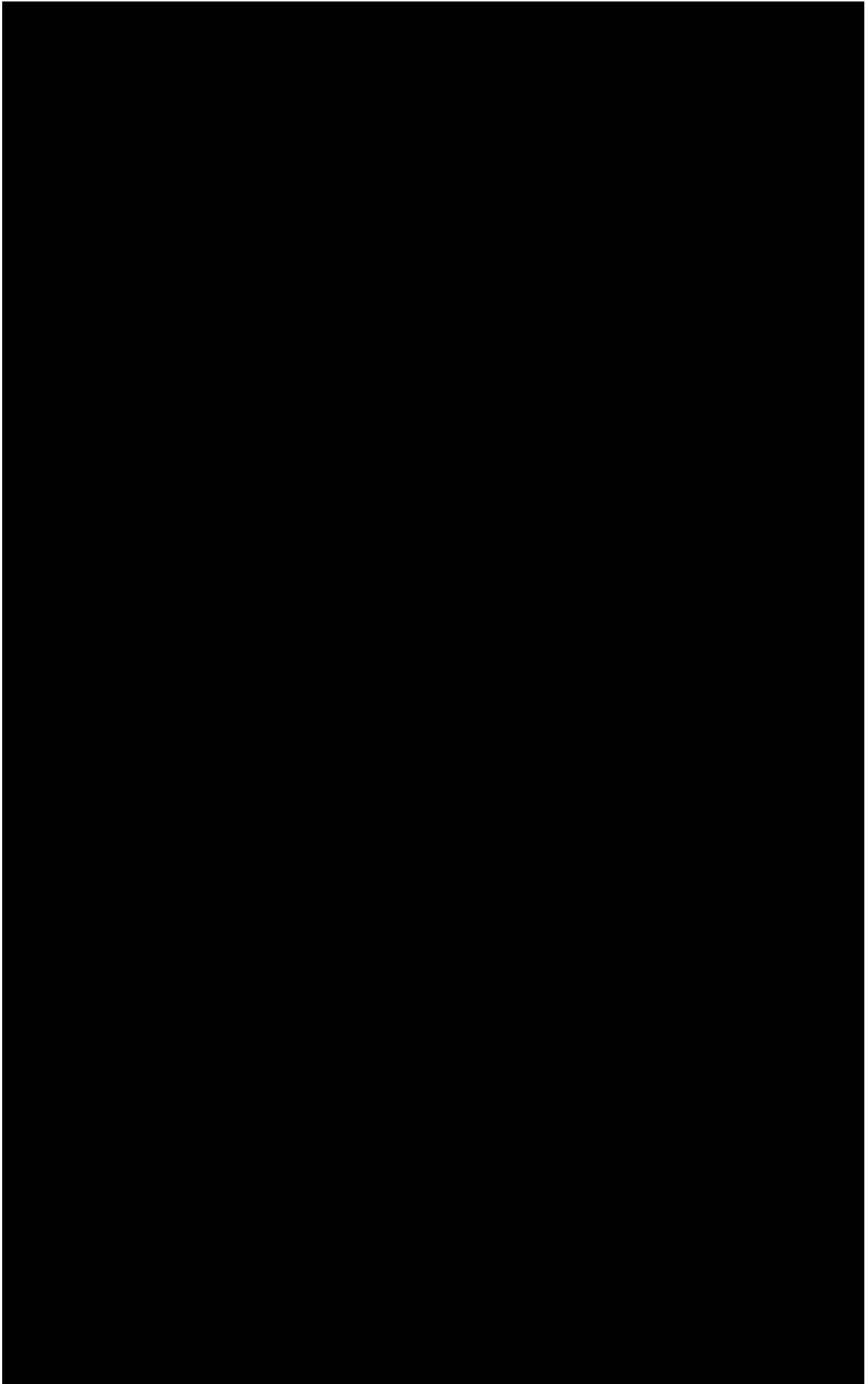
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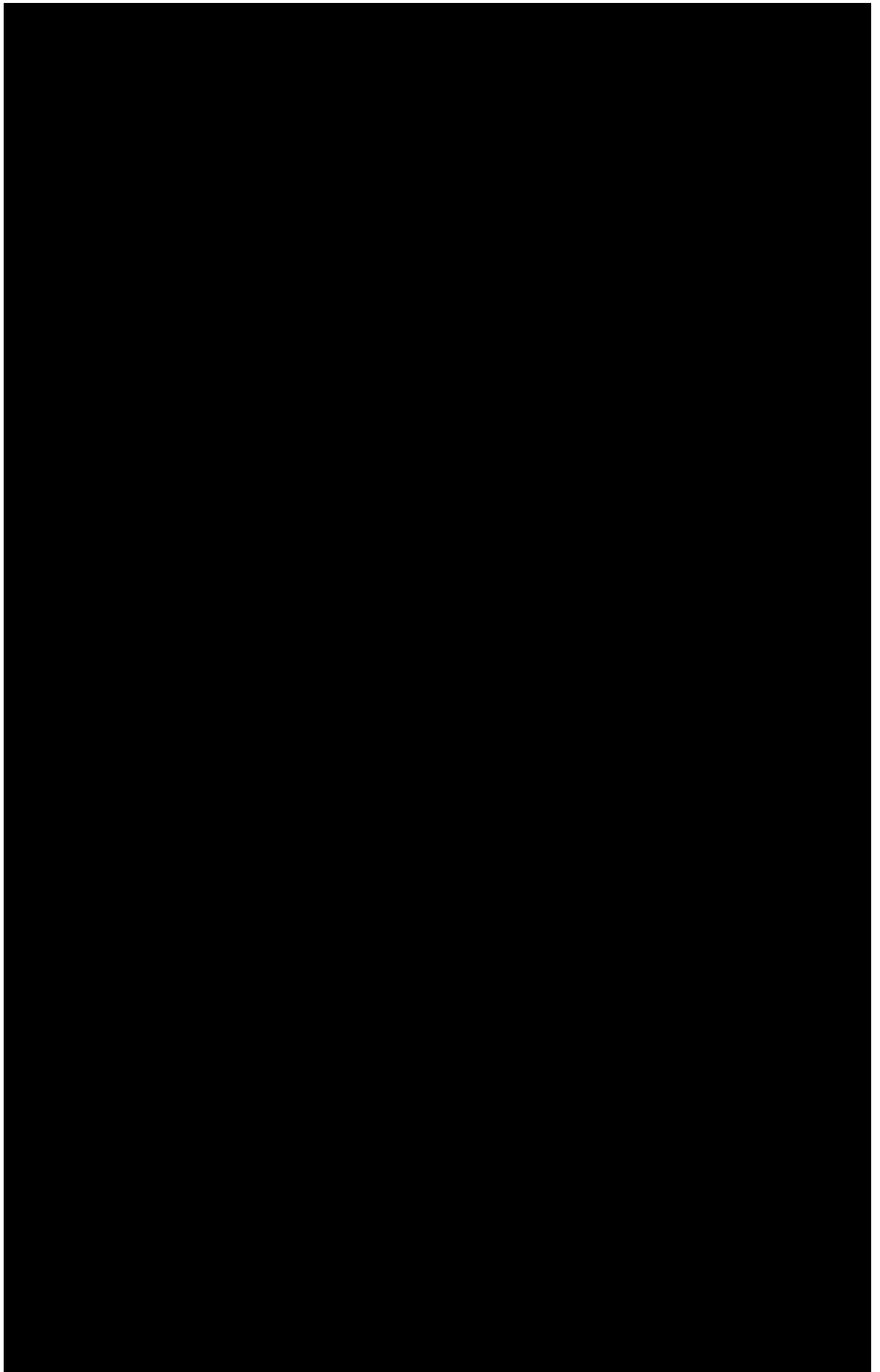
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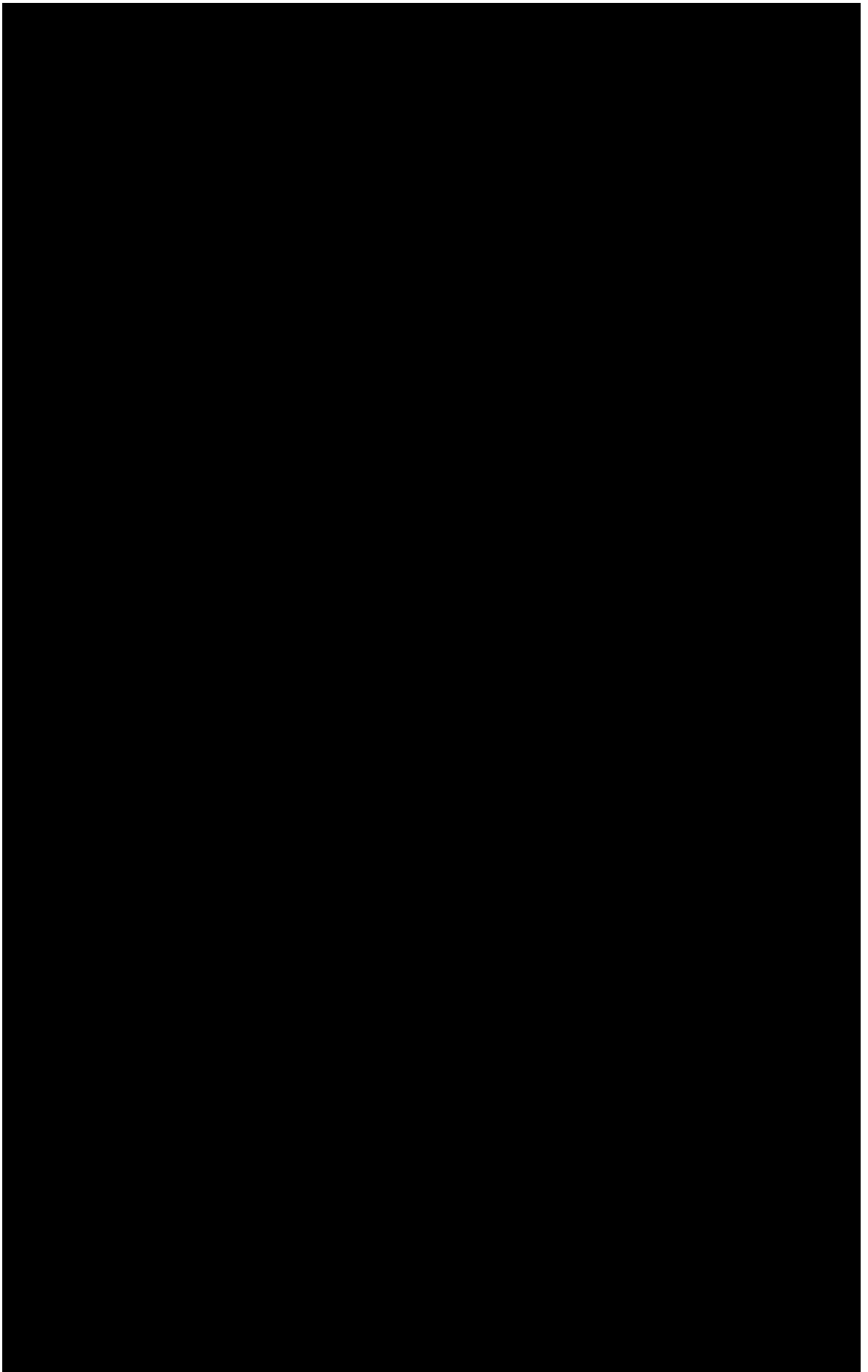
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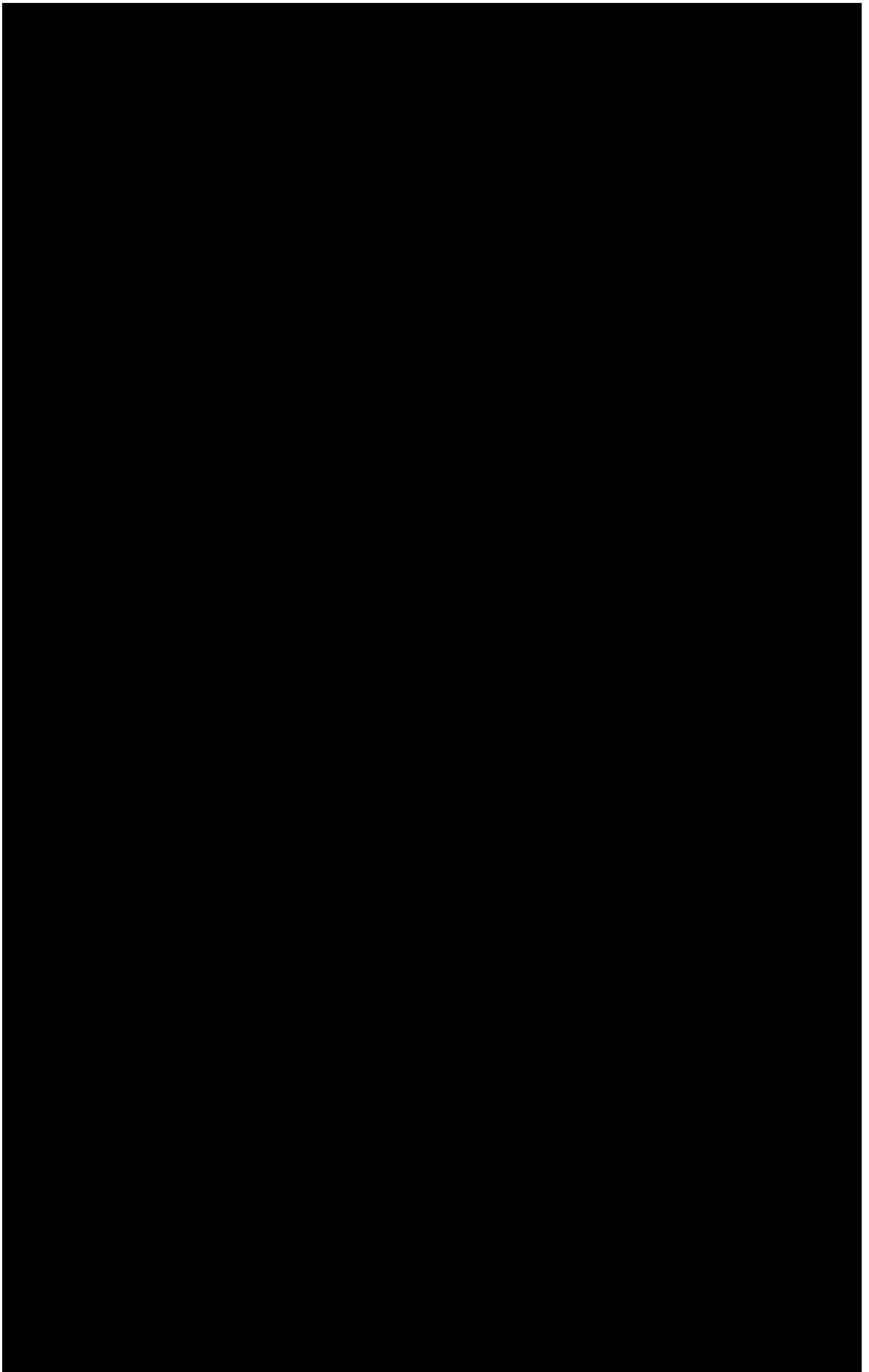
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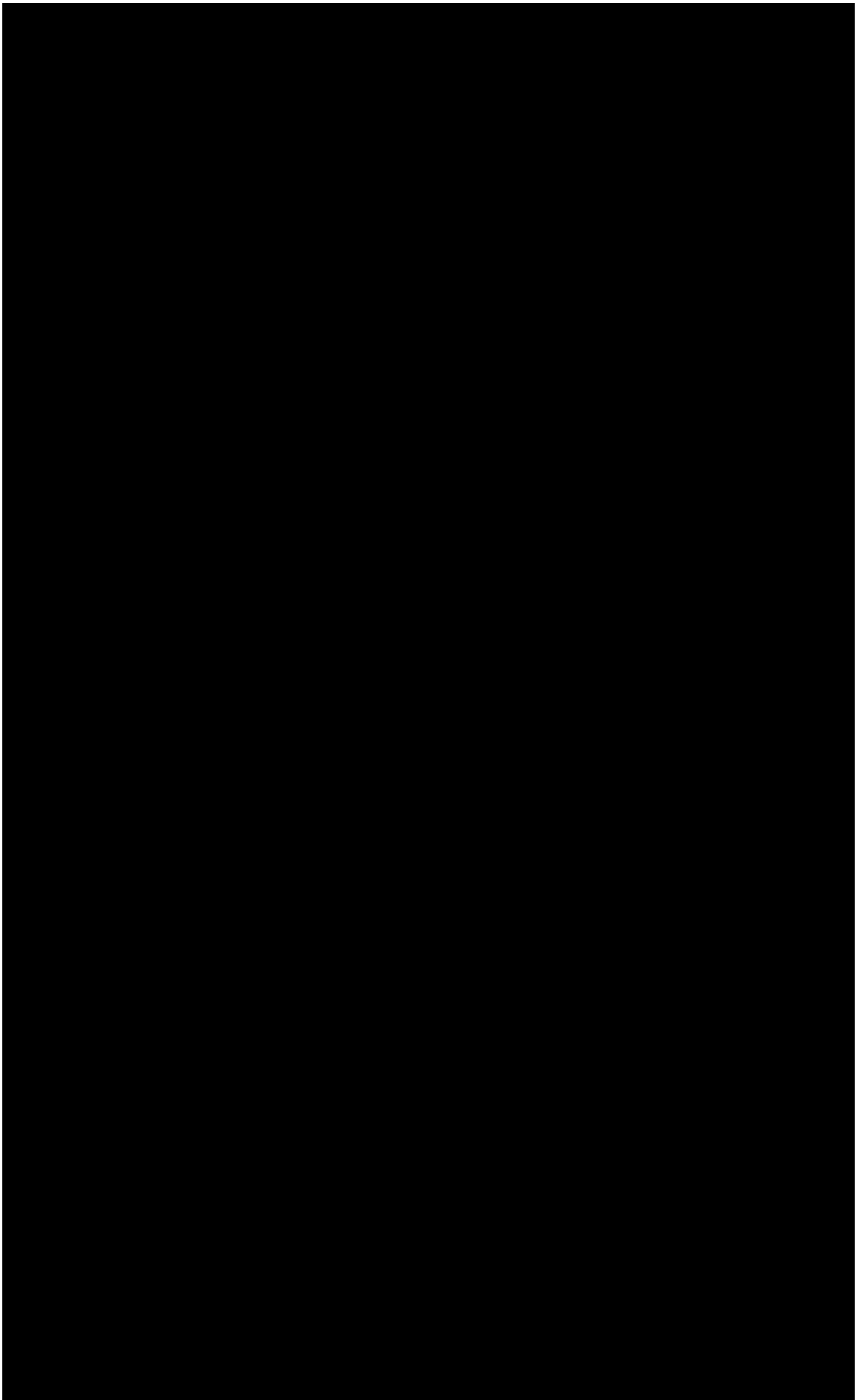
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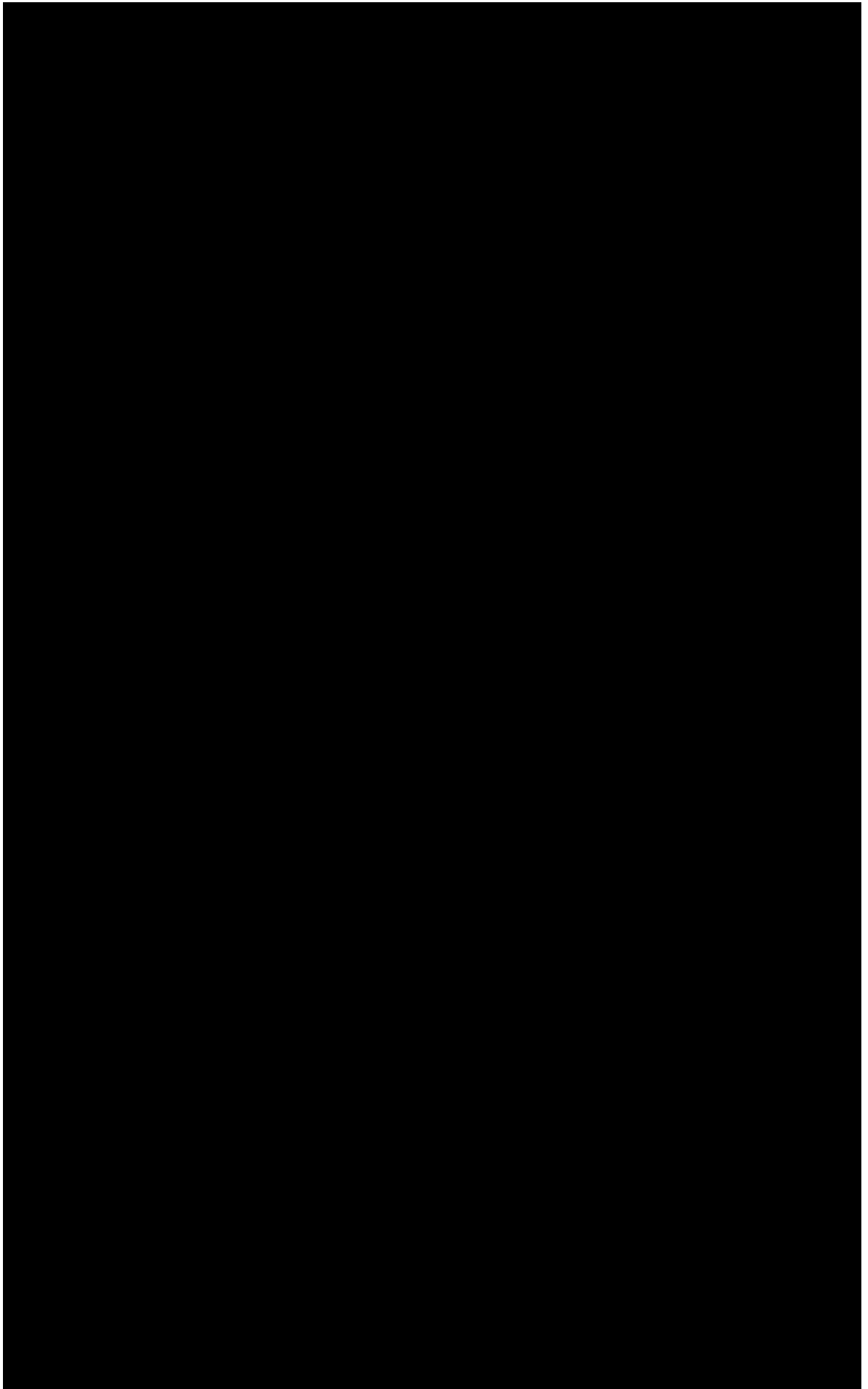
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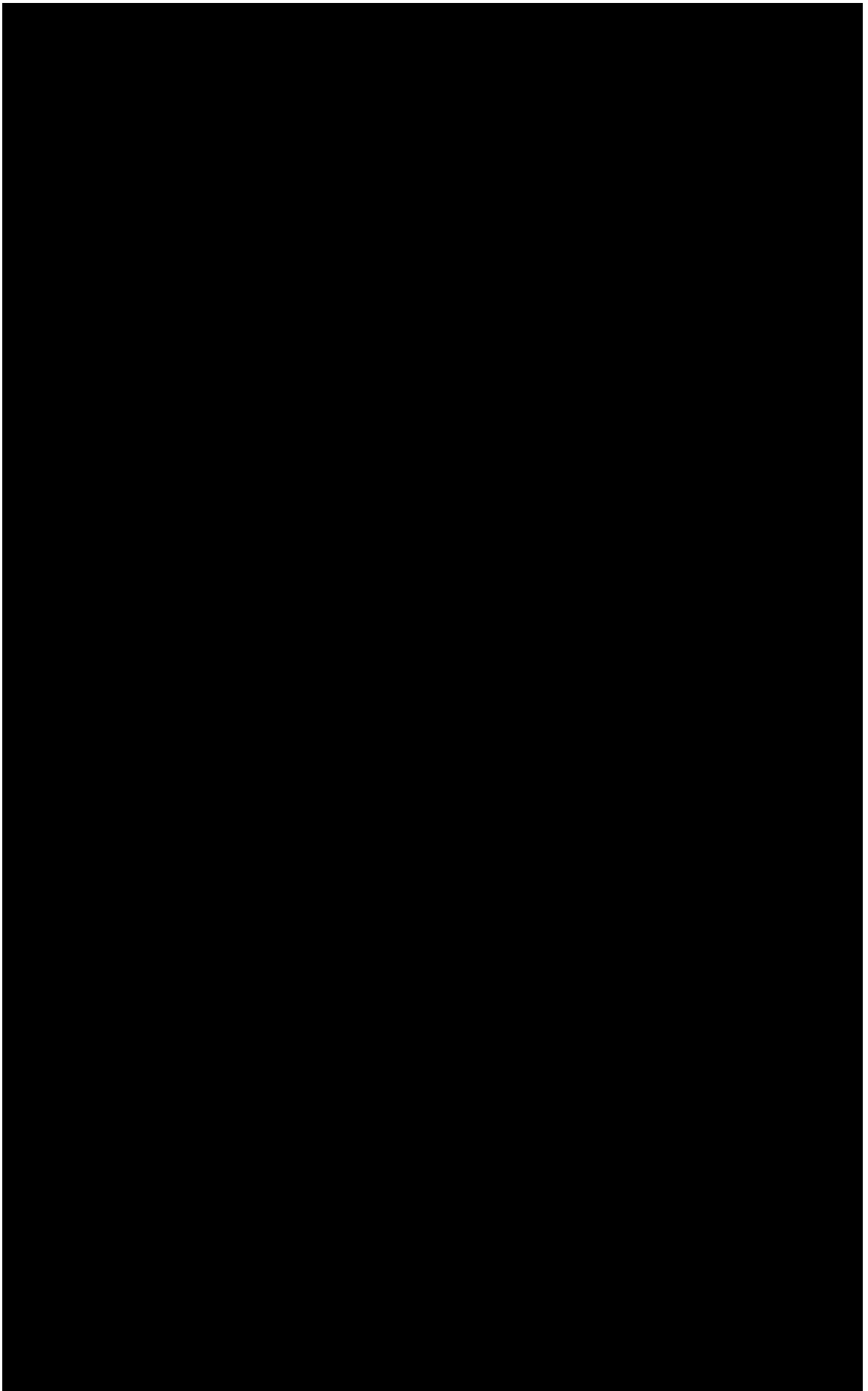
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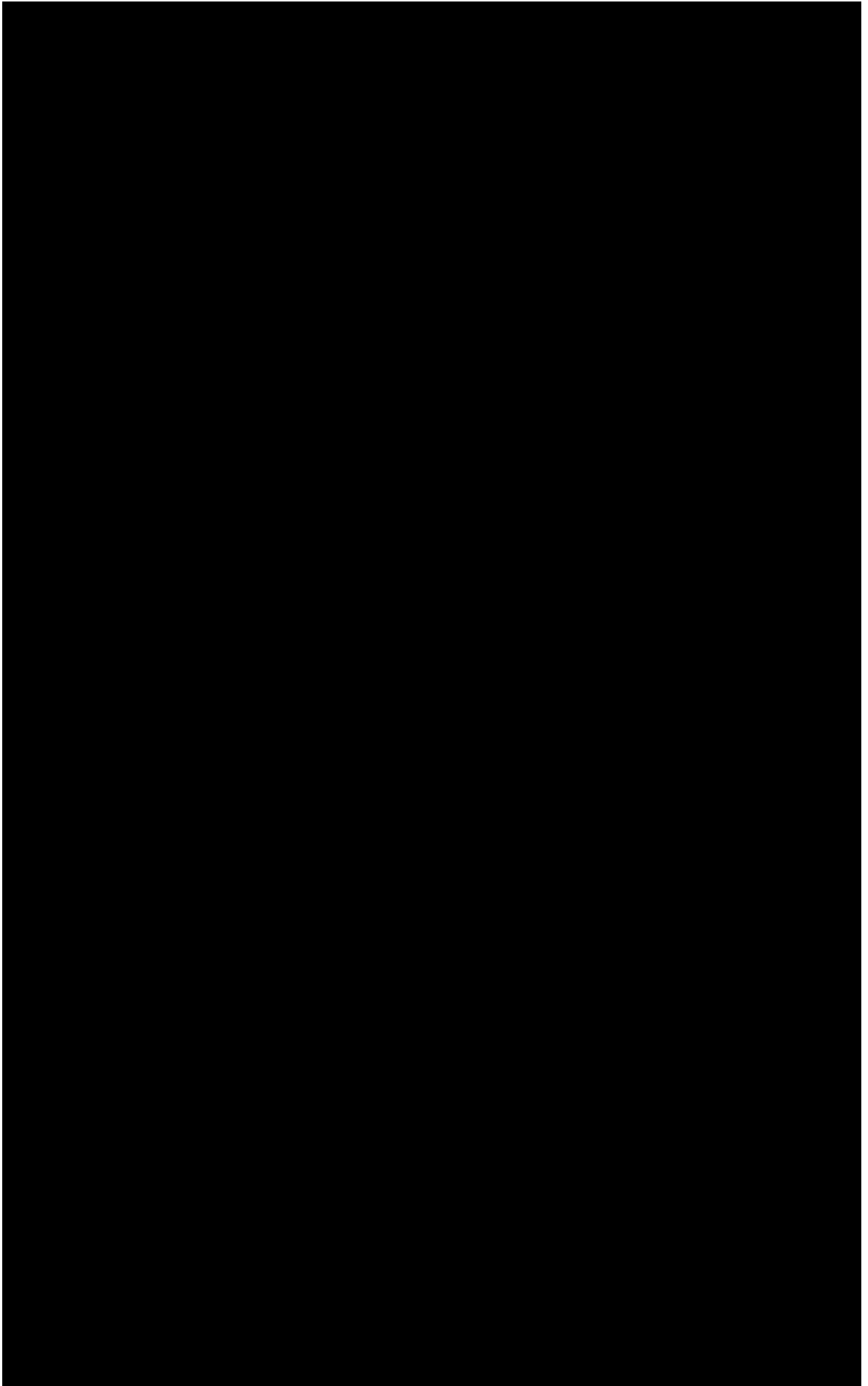
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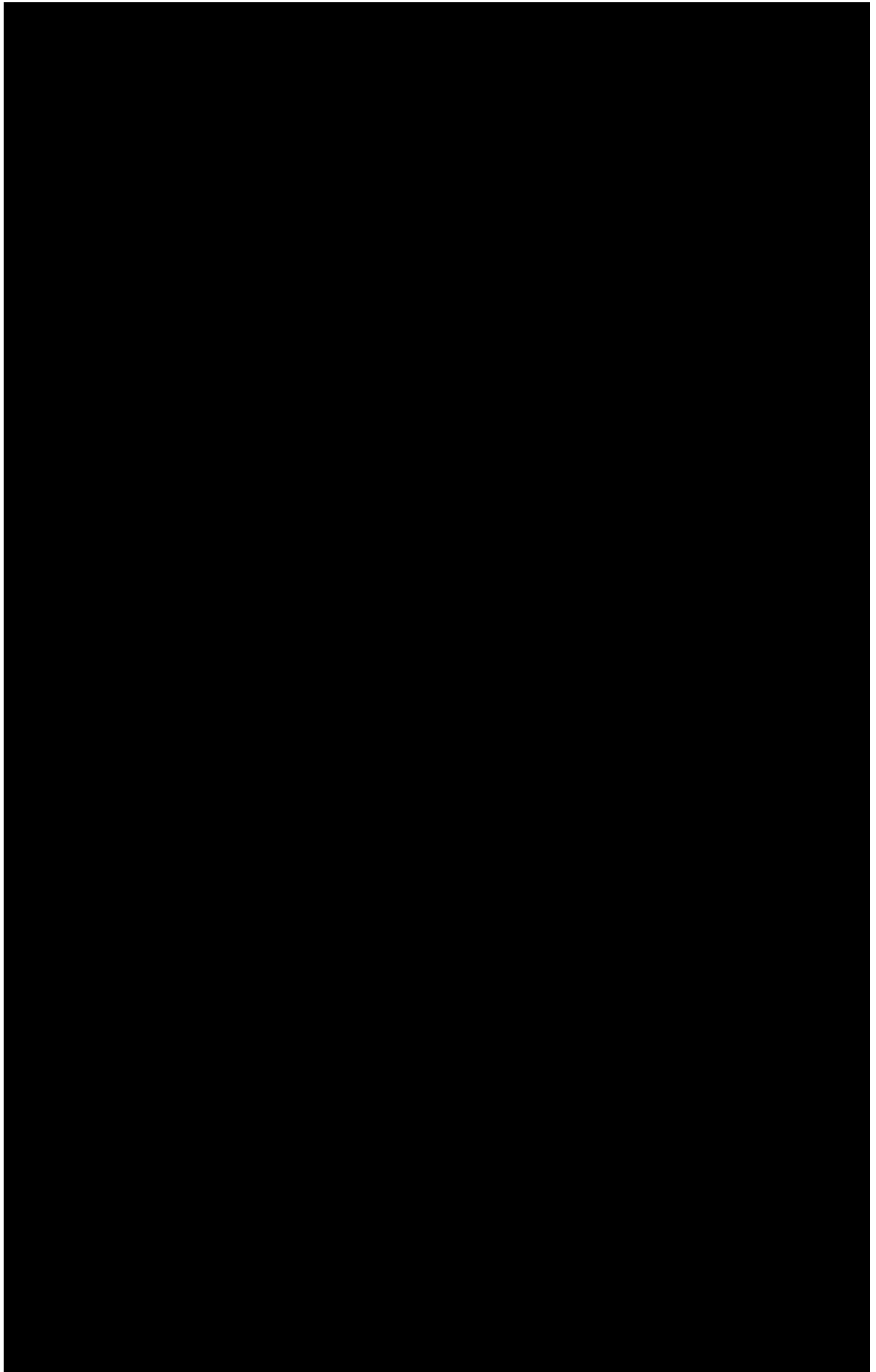
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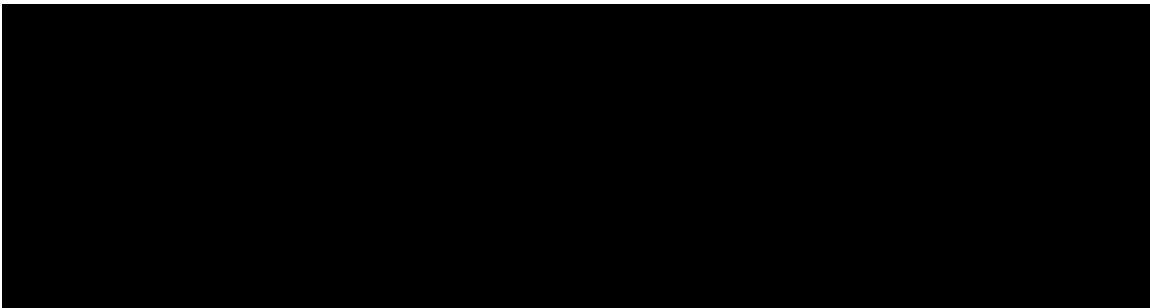
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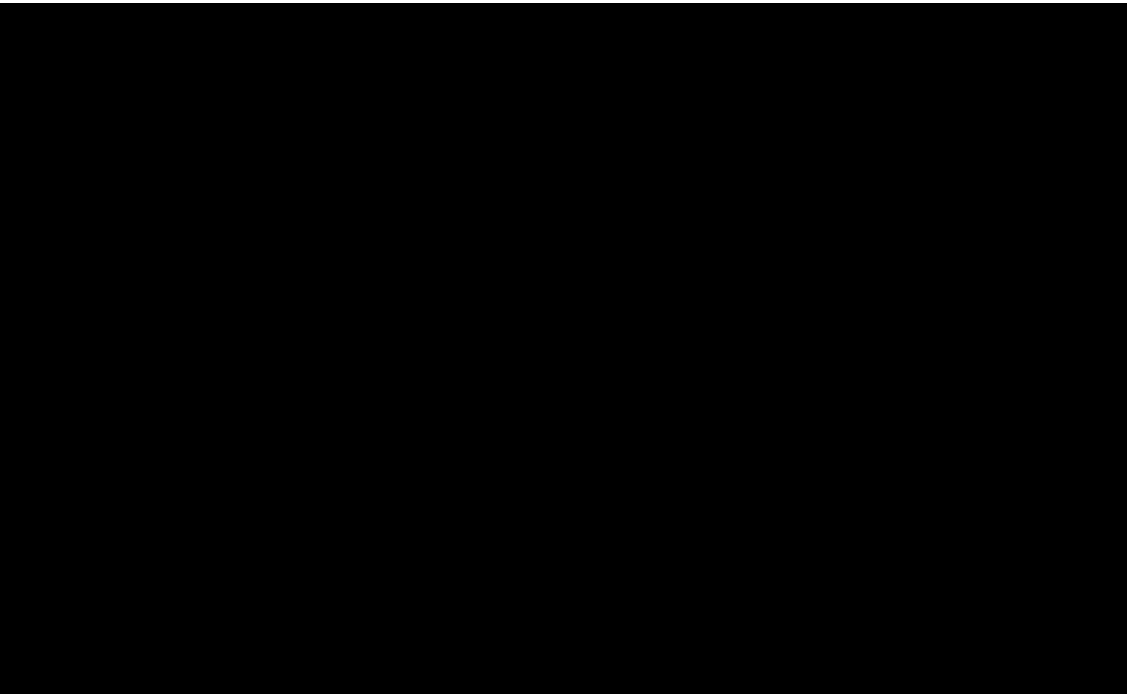
MR. ELSNER: This is Exhibit 17.

(WHEREUPON, a certain document was  
marked as CVS-Nicastro-017:  
10/7/10 e-mail string;  
CVS-MDLT1-000034172 - 000034177.)

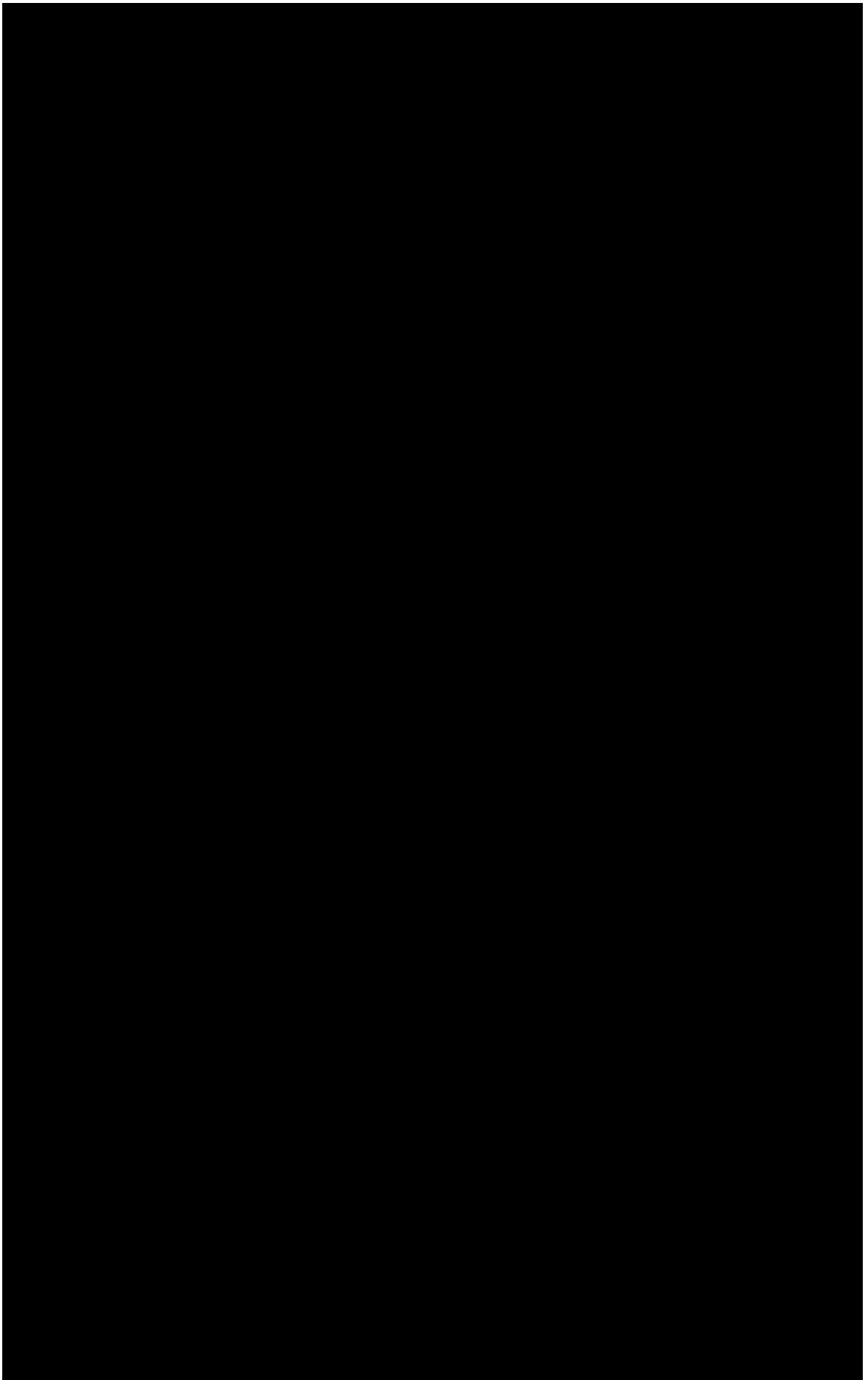
BY MR. ELSNER:

Q. I want to direct your attention to the  
middle e-mail from John Mortelliti to Gary  
Misiasek. Who is Gary Misiasek?

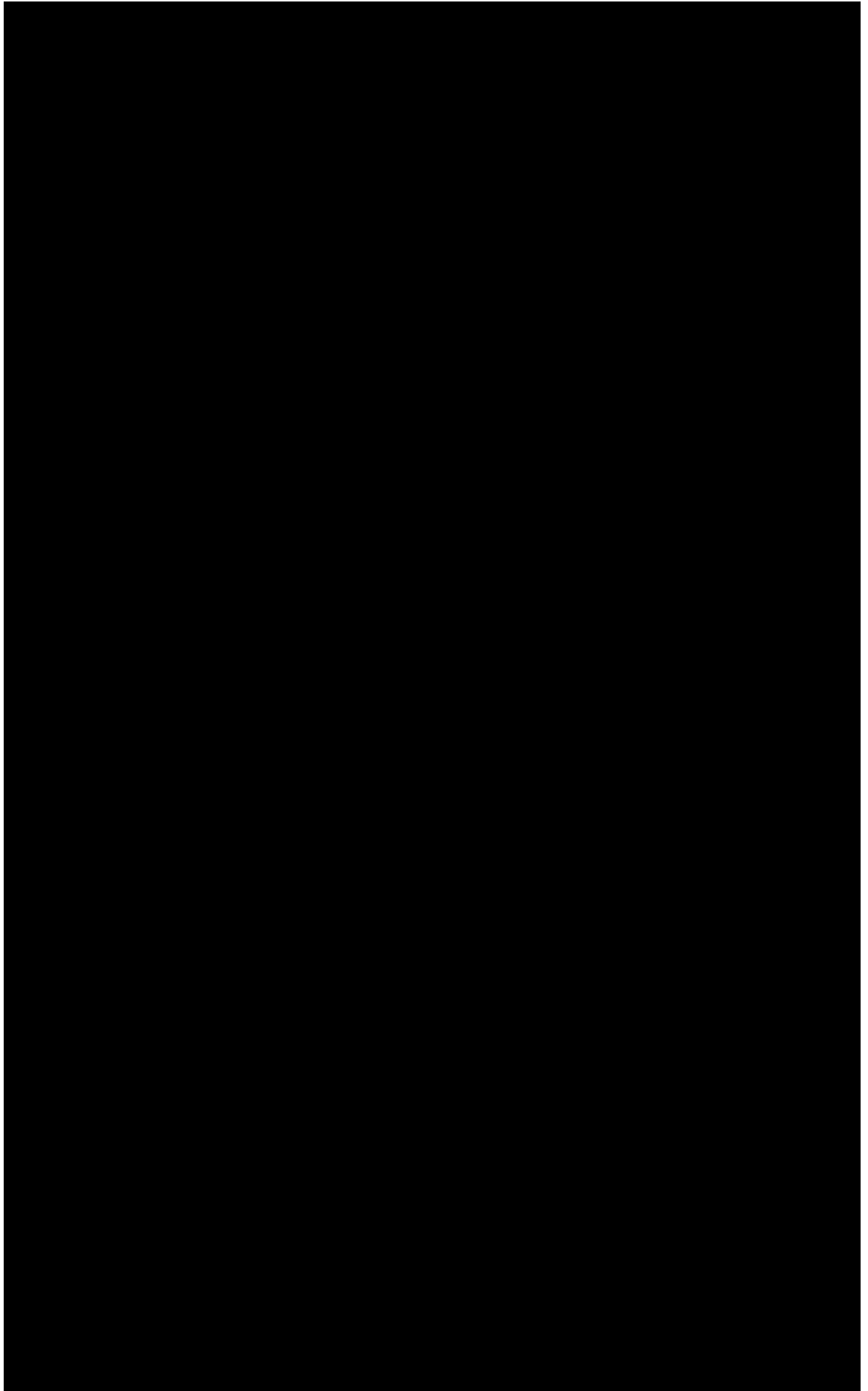
A. He works in our corporate office. He  
does IT type things. Pulls data.



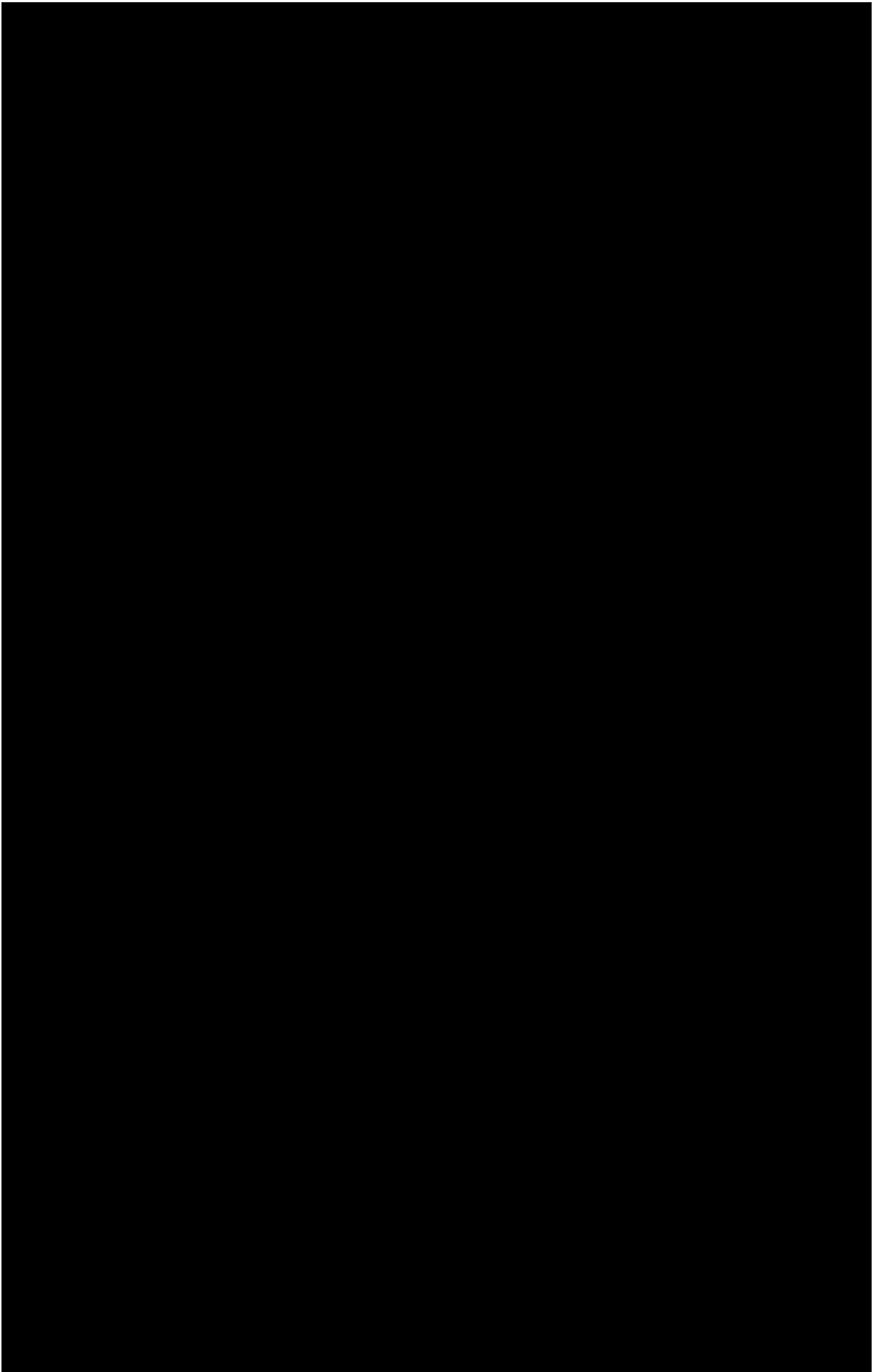
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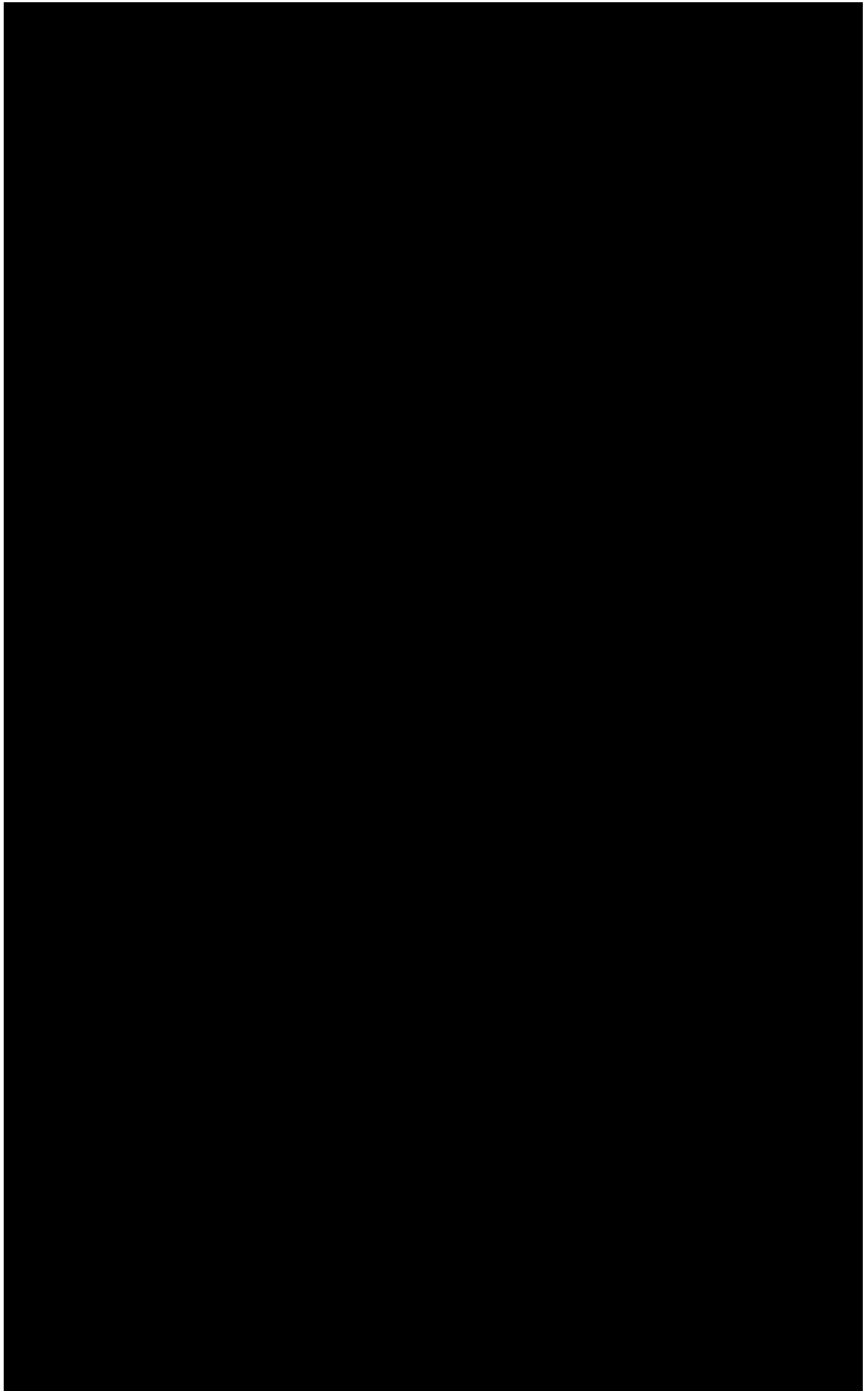
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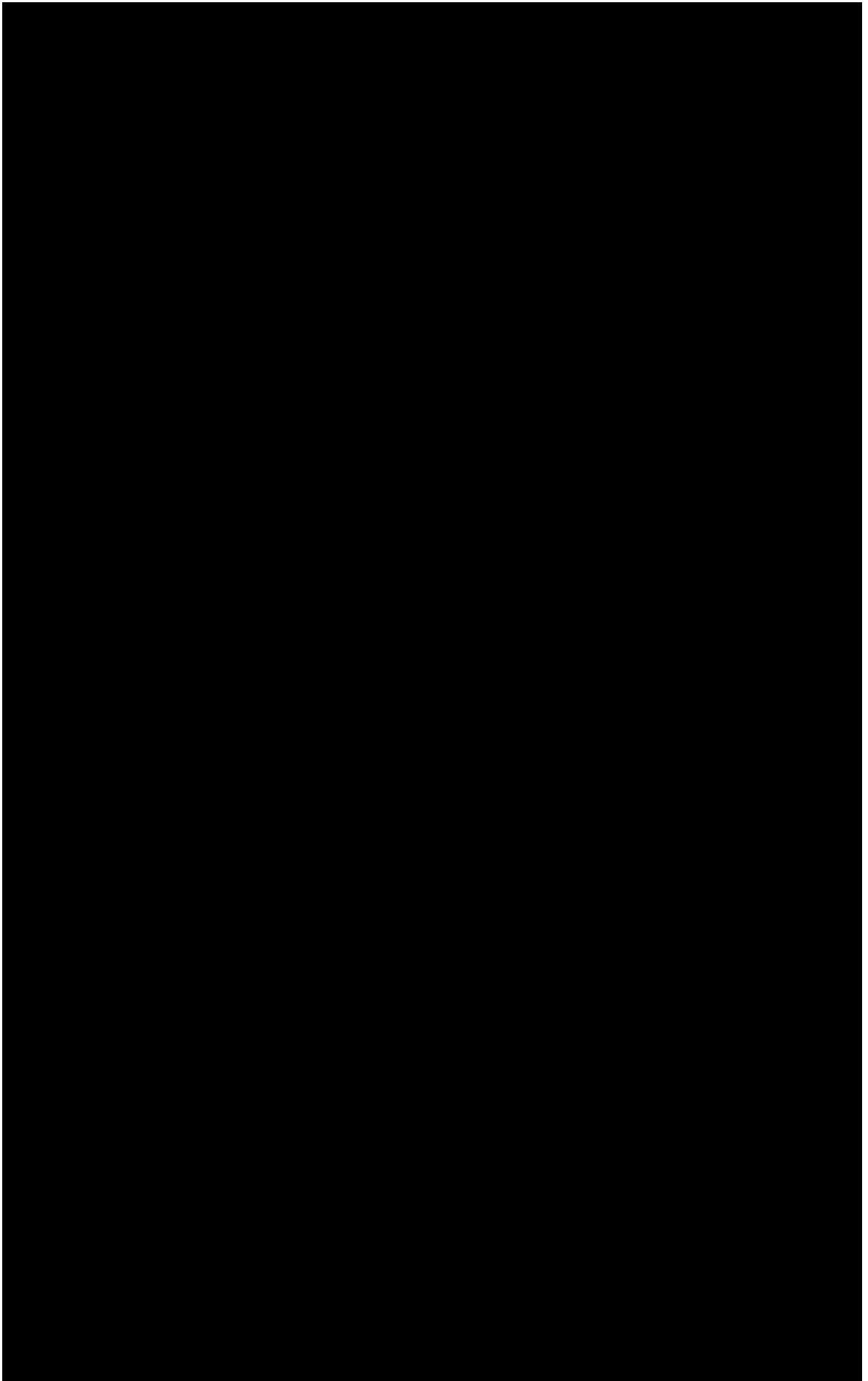
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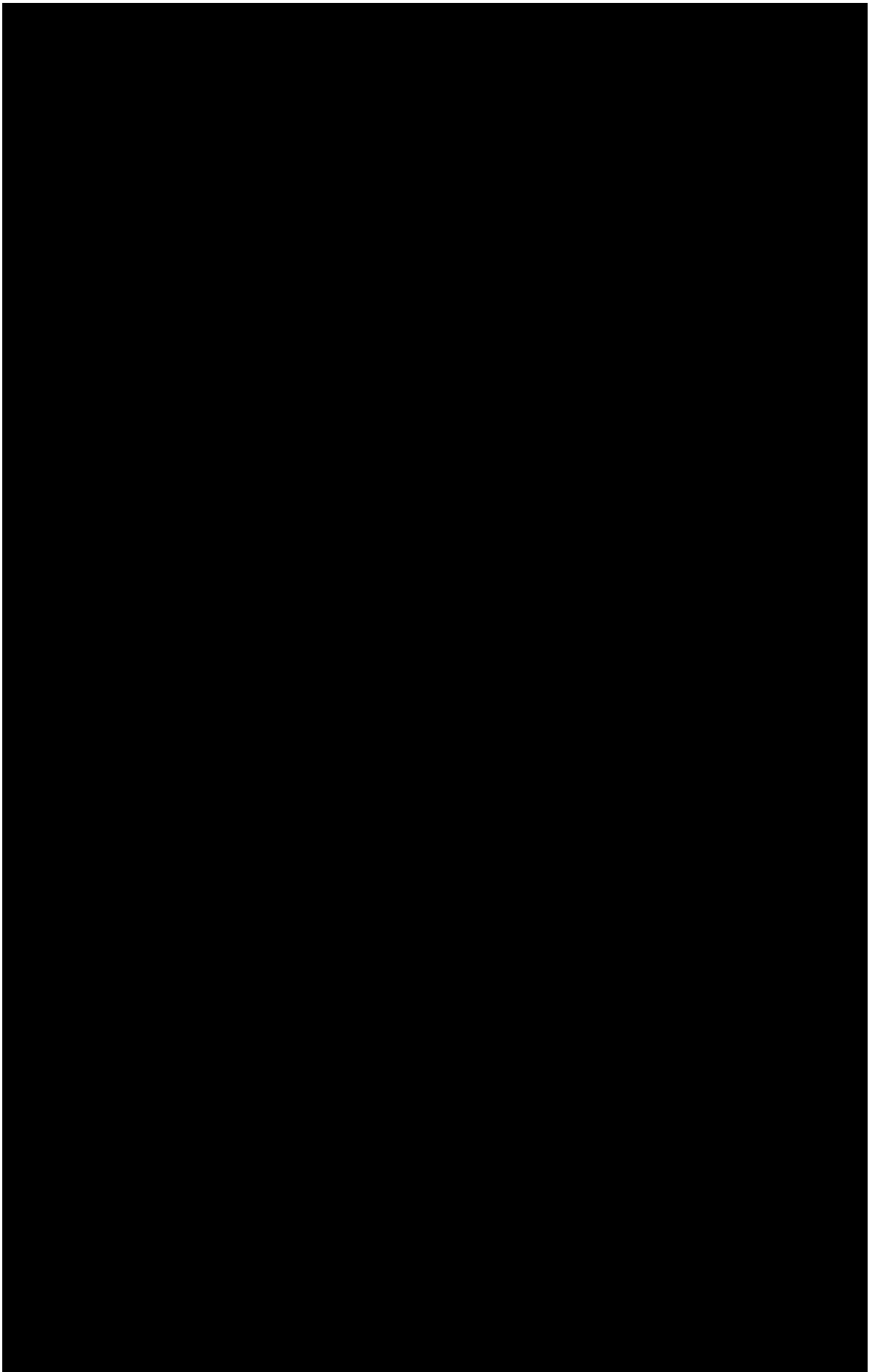
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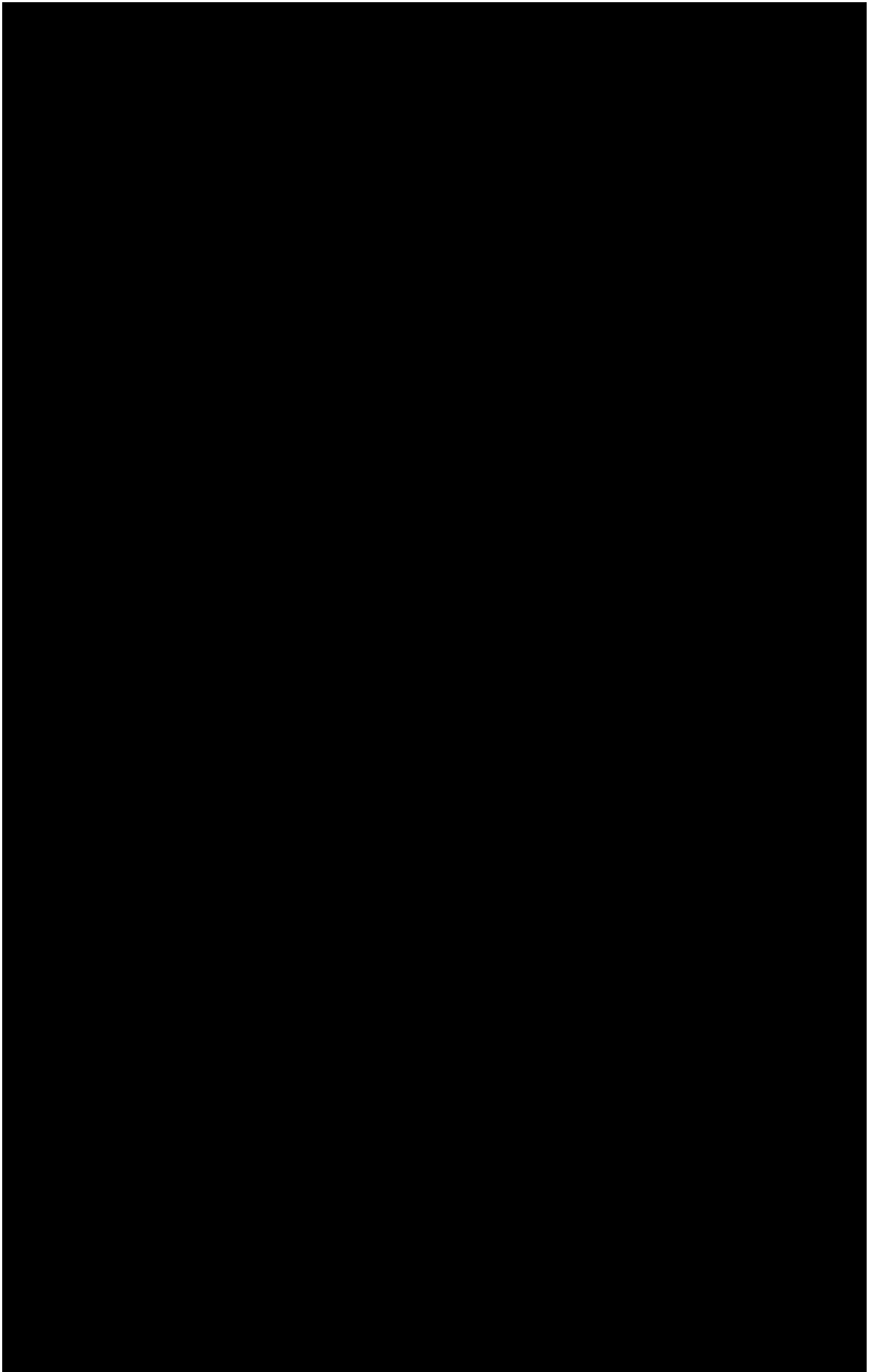
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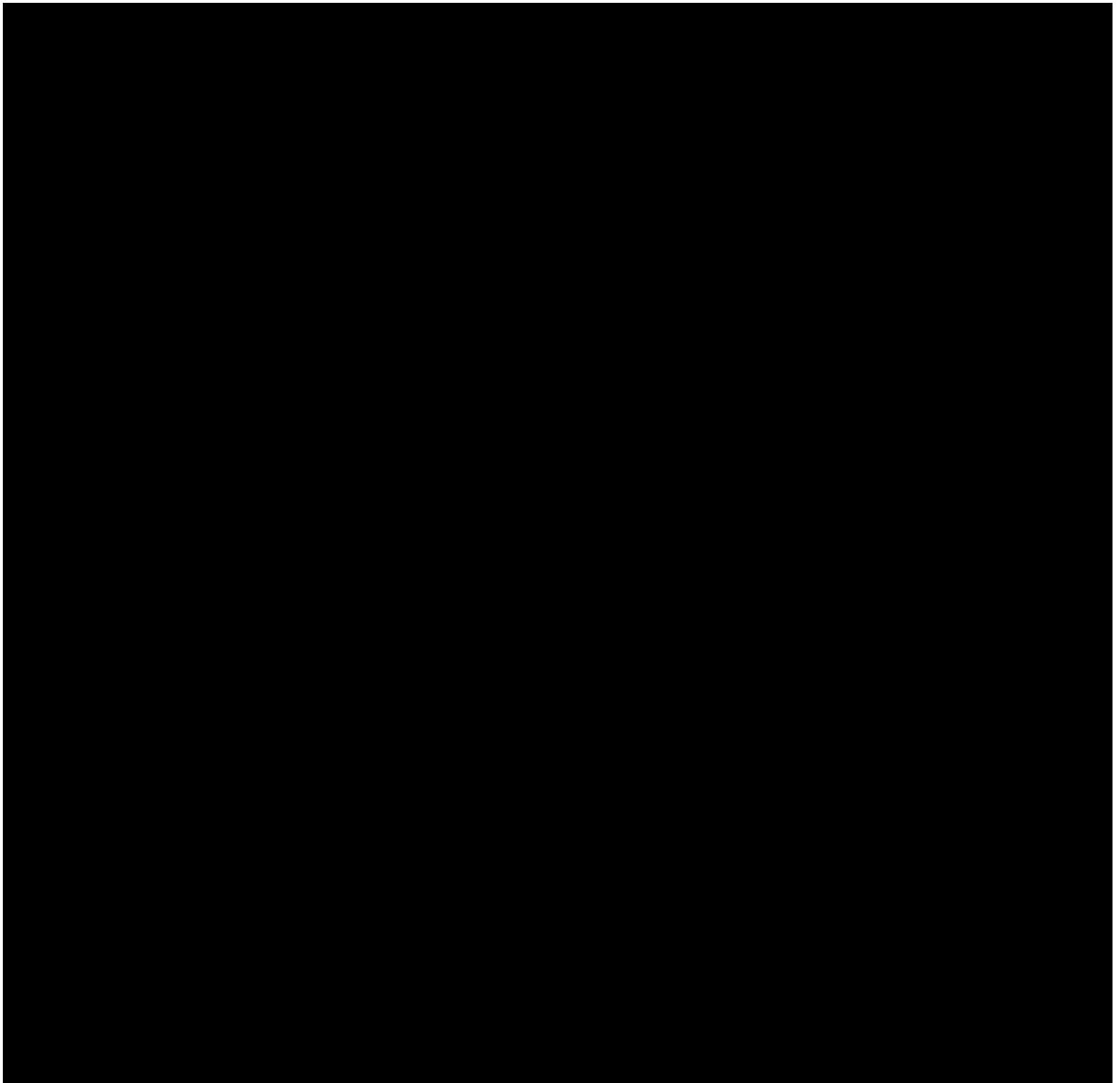
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16 MR. ELSNER: Go off the record for one quick  
17 minute.

18 MR. HYNES: Sure. That's fine.

19 THE VIDEOGRAPHER: We are going off the record  
20 at 11:37.

21 (WHEREUPON, a recess was had  
22 from 11:37 to 11:40 a.m.)

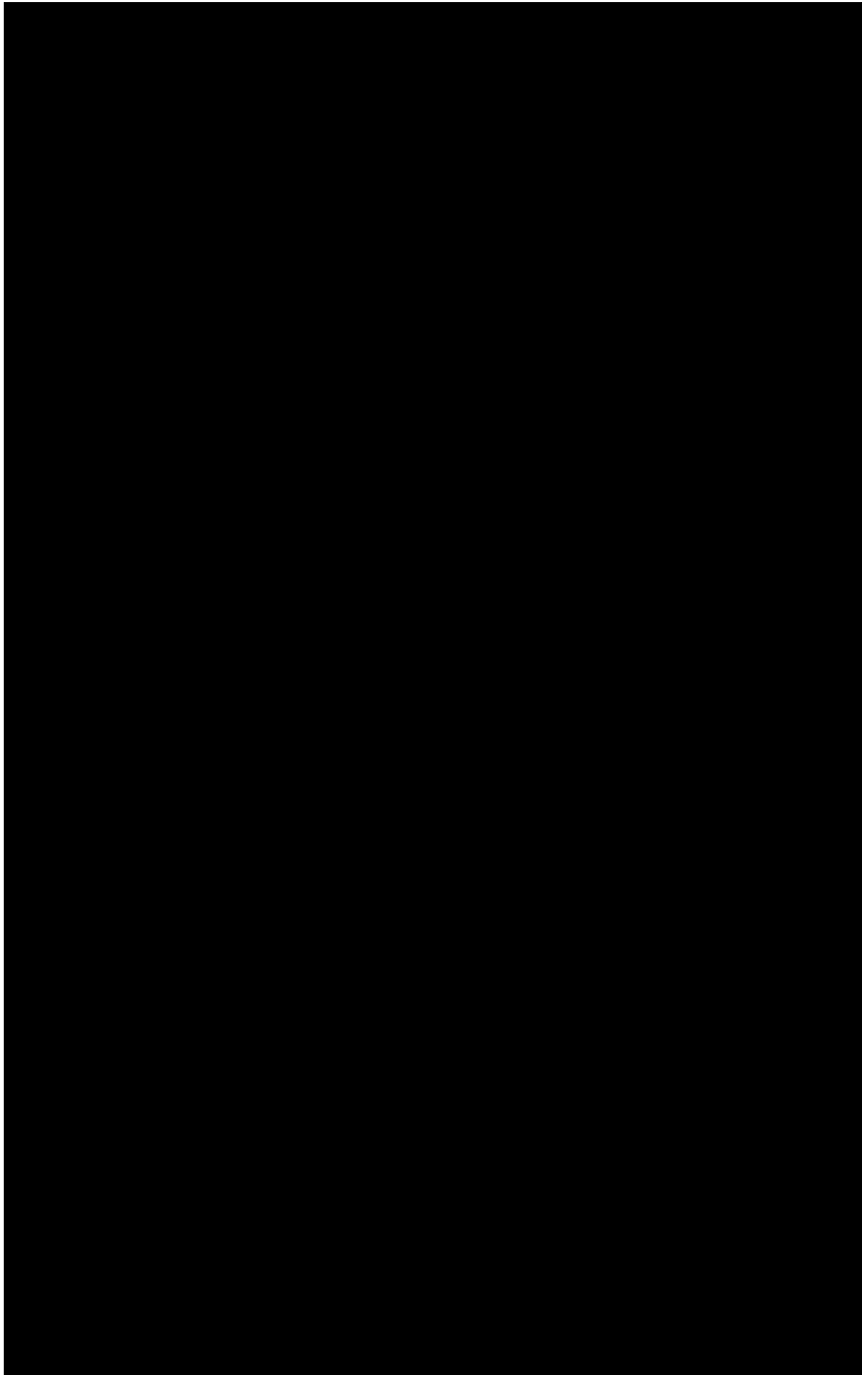
23 THE VIDEOGRAPHER: We are back on the record  
24 at 11:40.

1 (WHEREUPON, a certain document was  
2 marked as CVS-Nicastro-019:  
3 Organizational chart;  
4 CVS-MDLT1-000030733.)

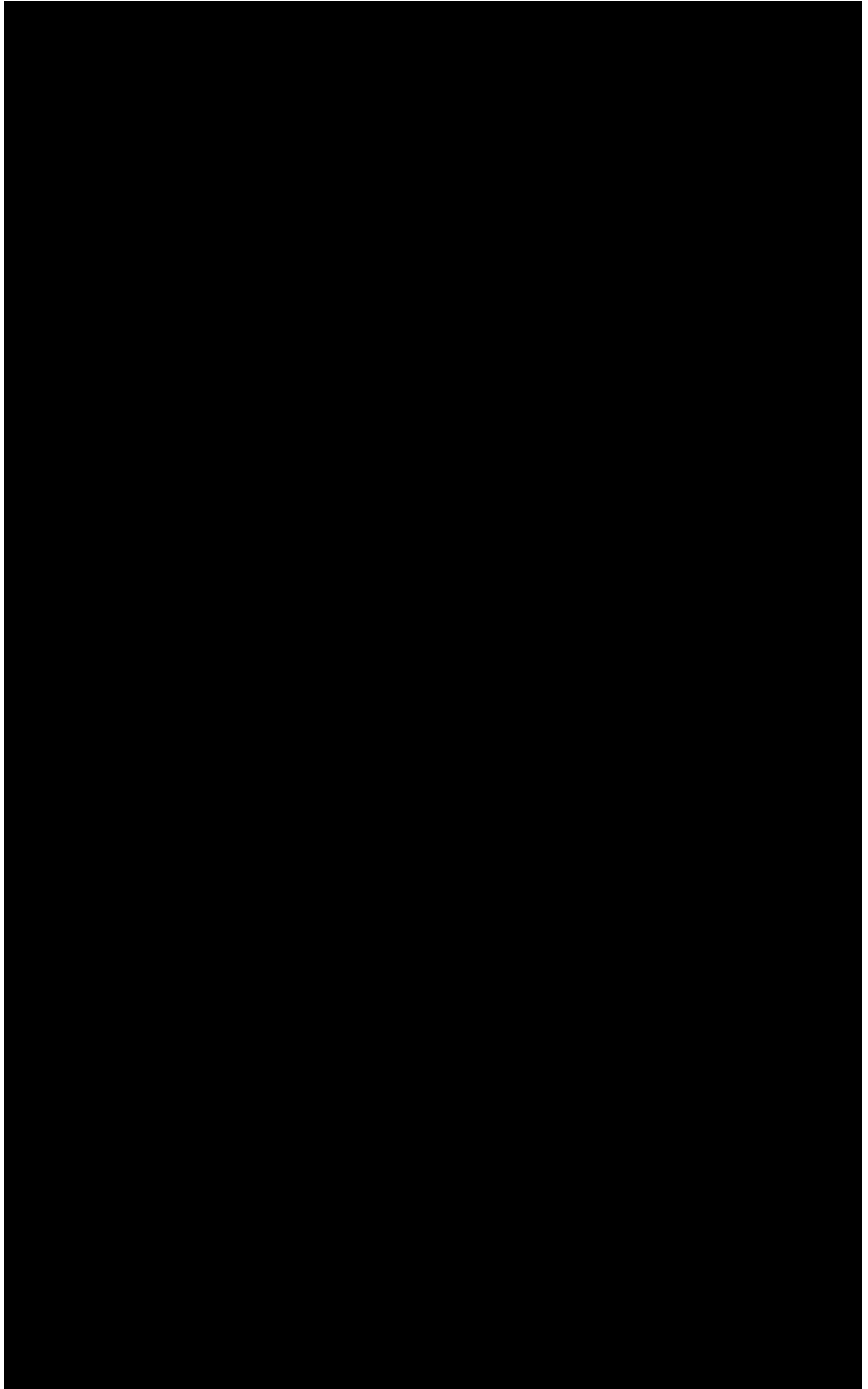
5 BY MR. ELSNER:

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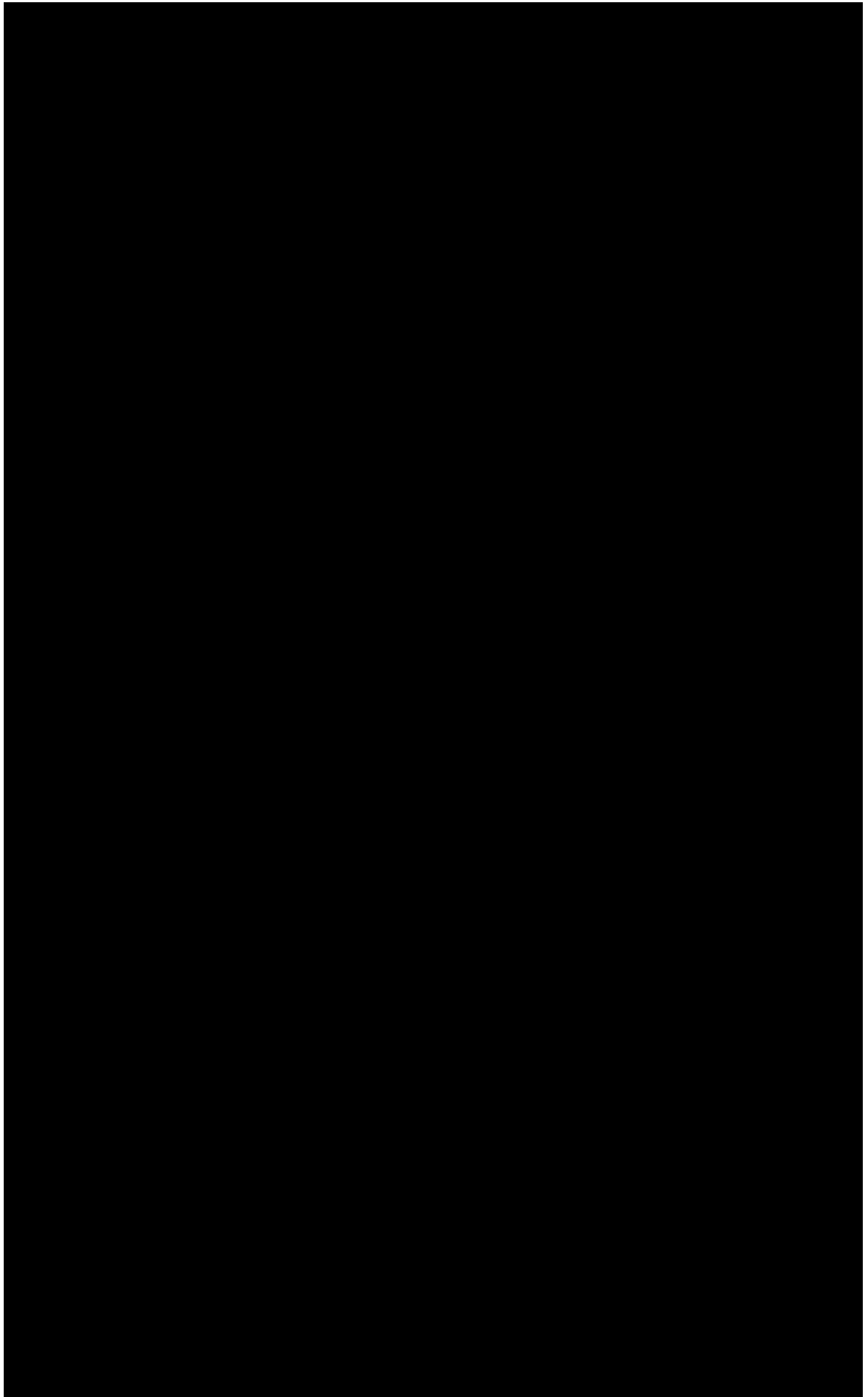
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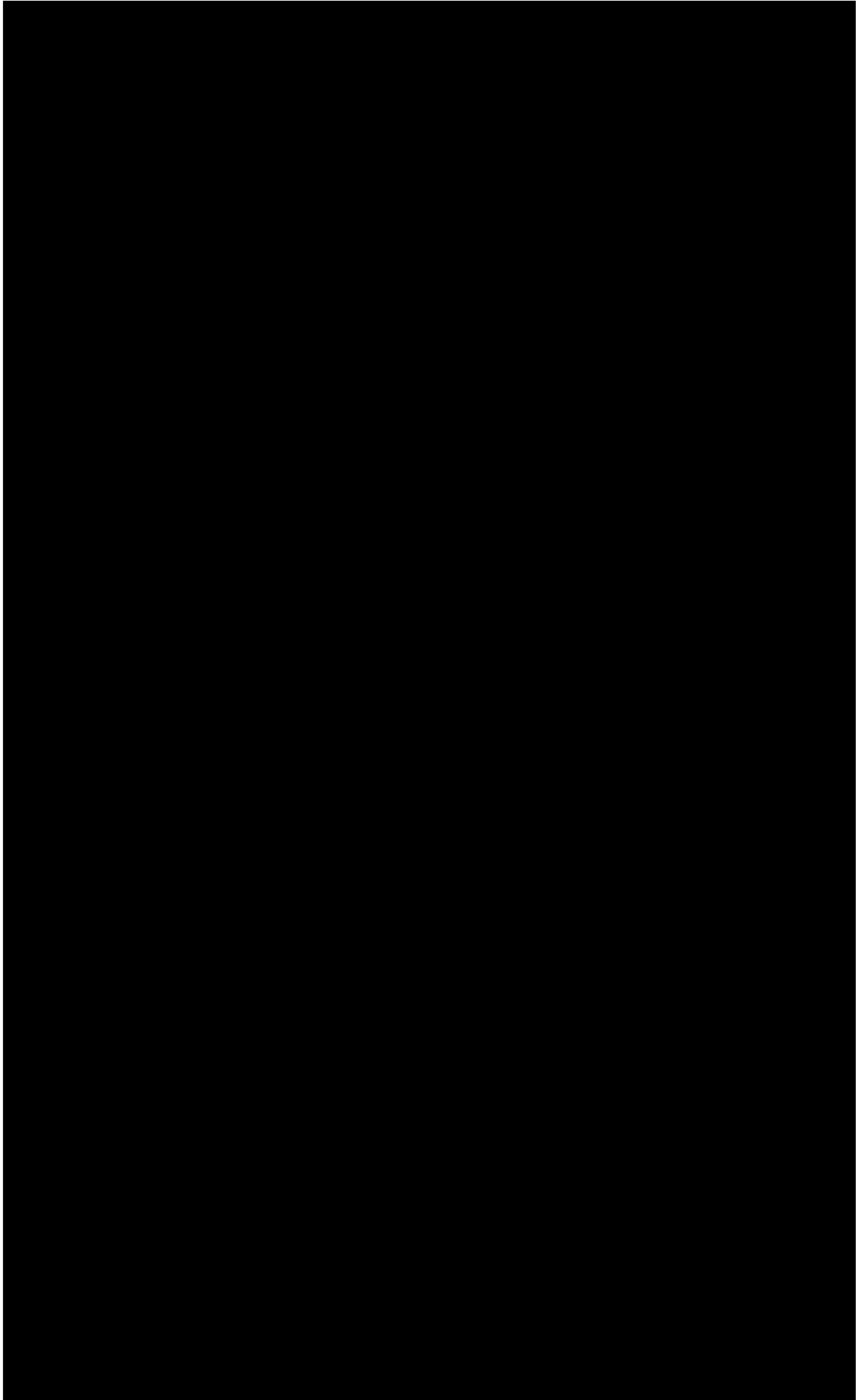
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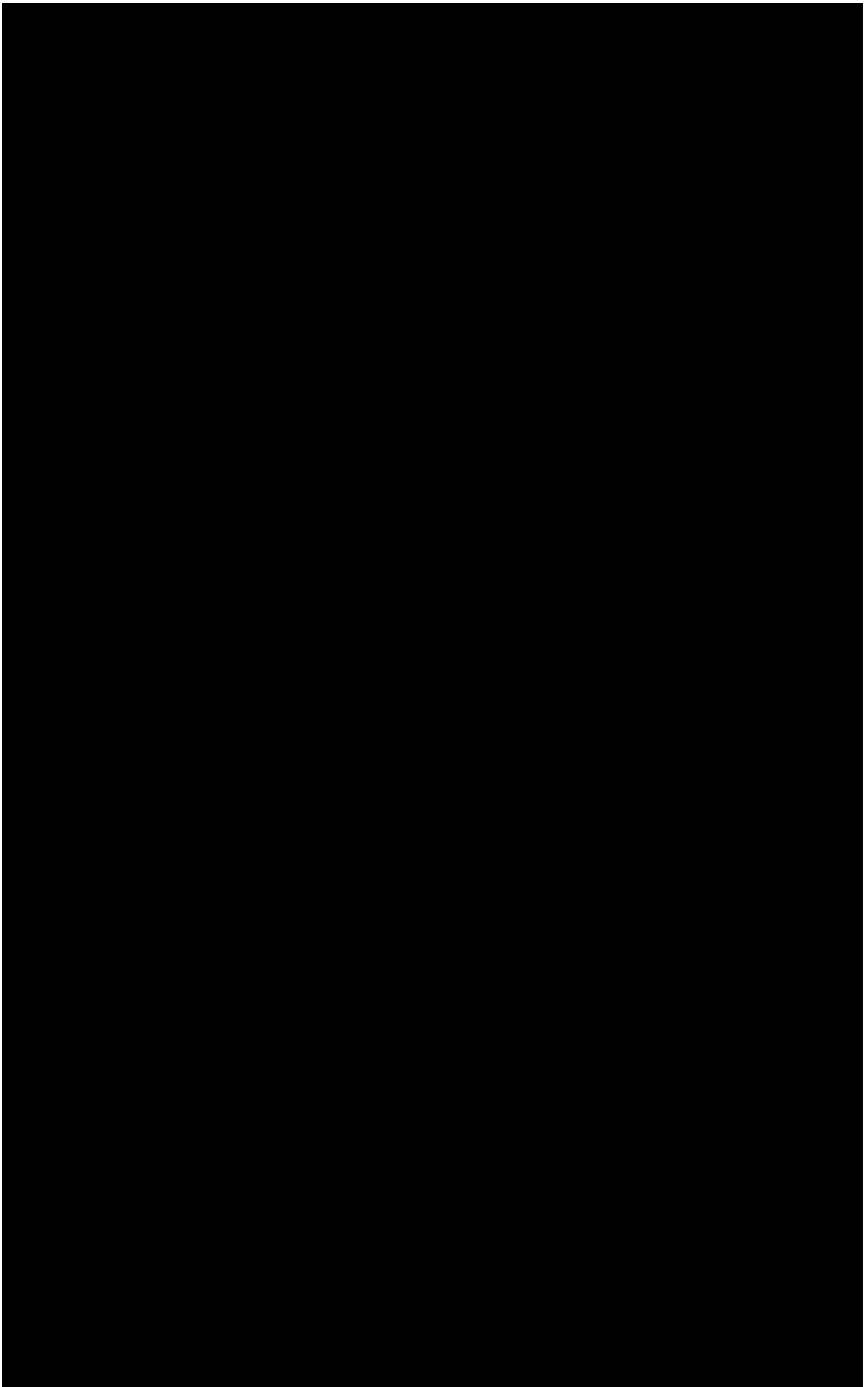
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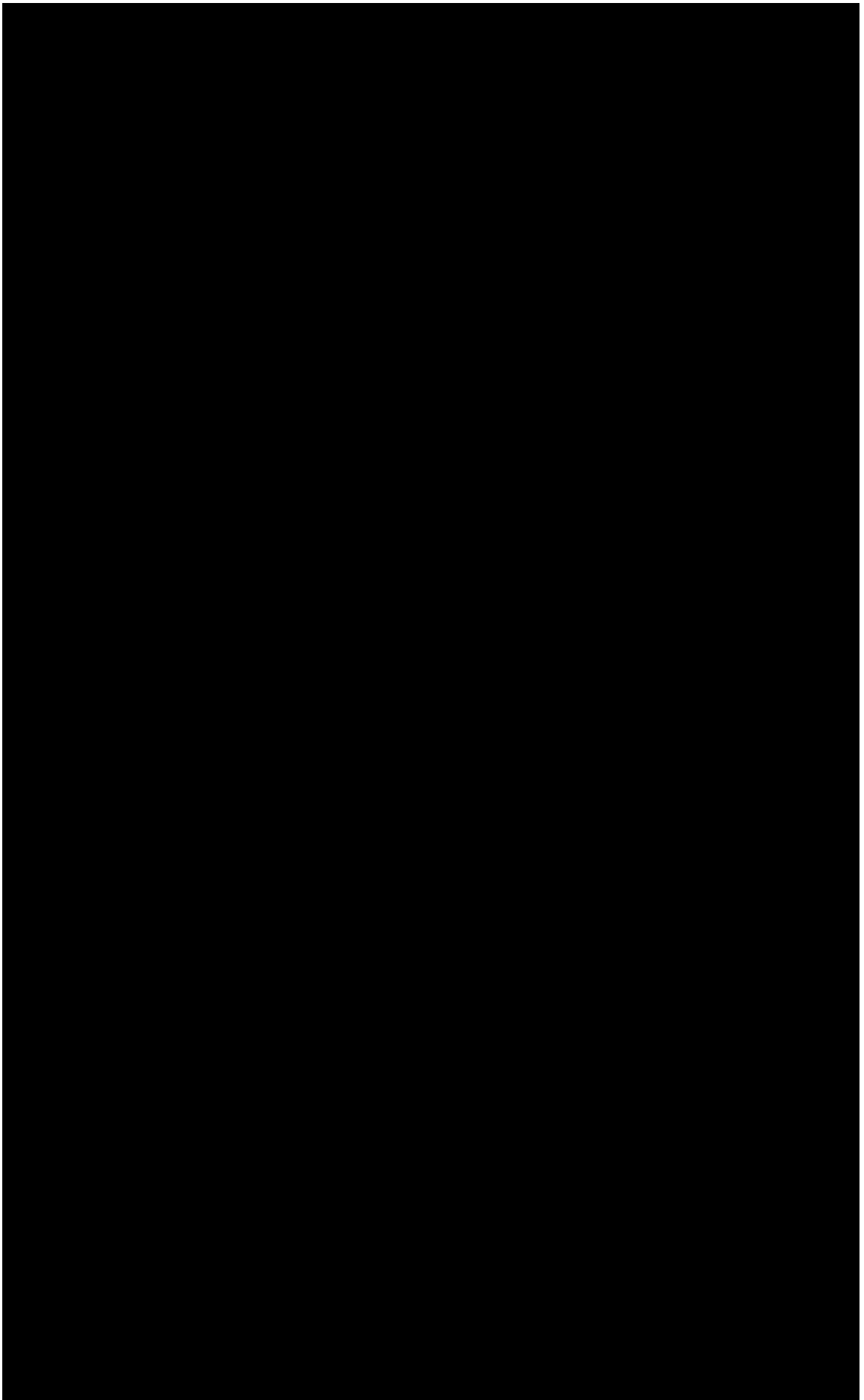
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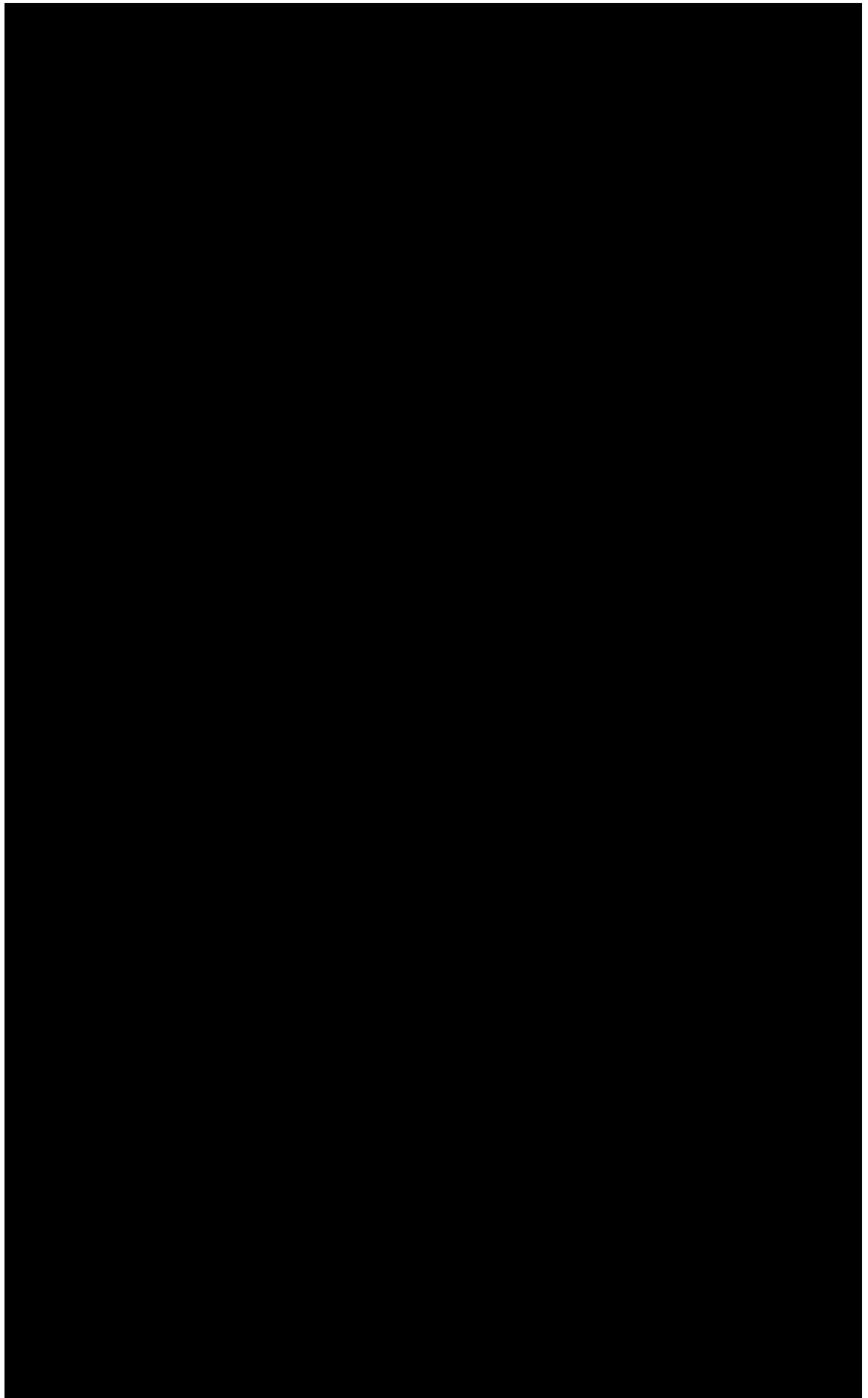
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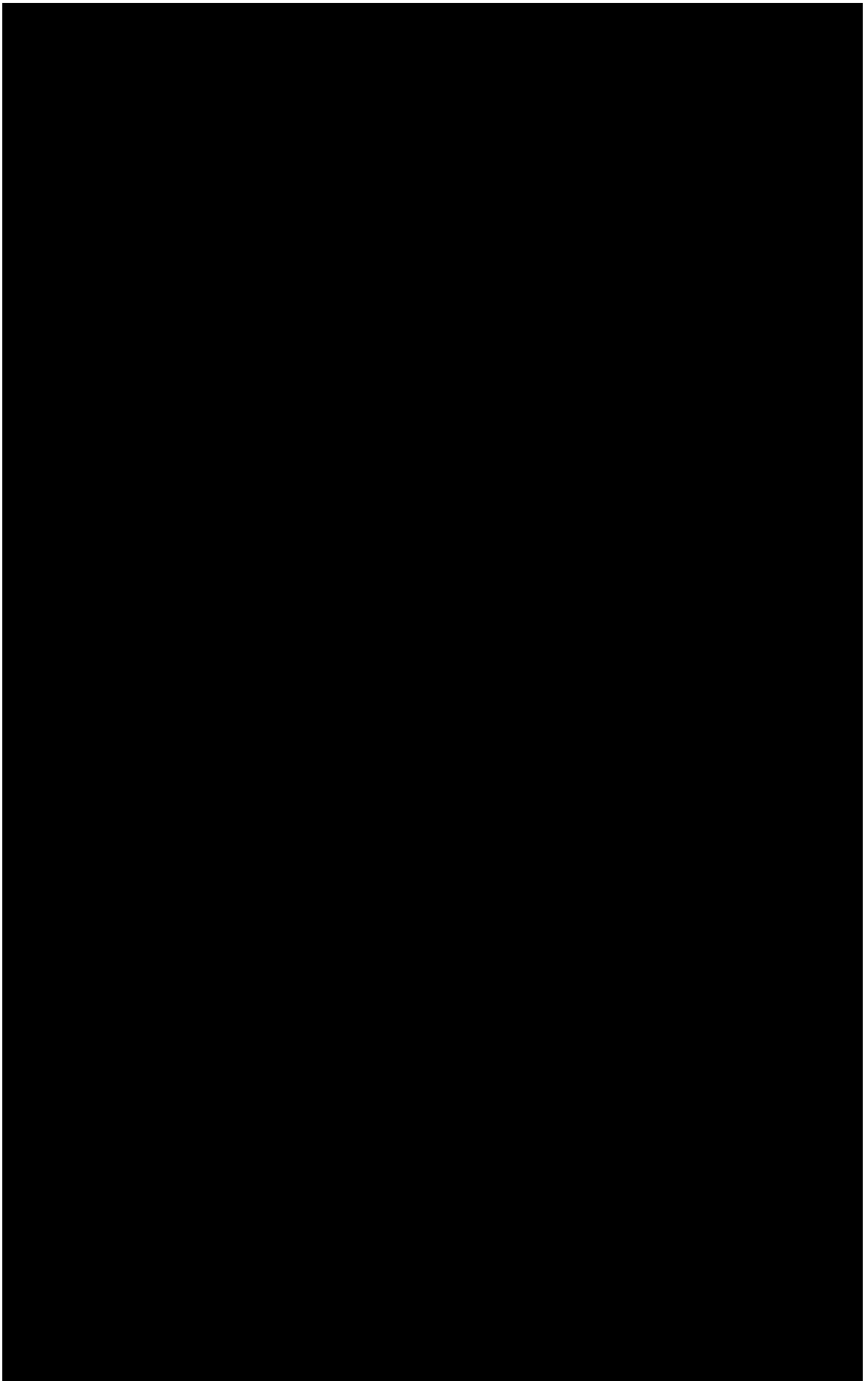
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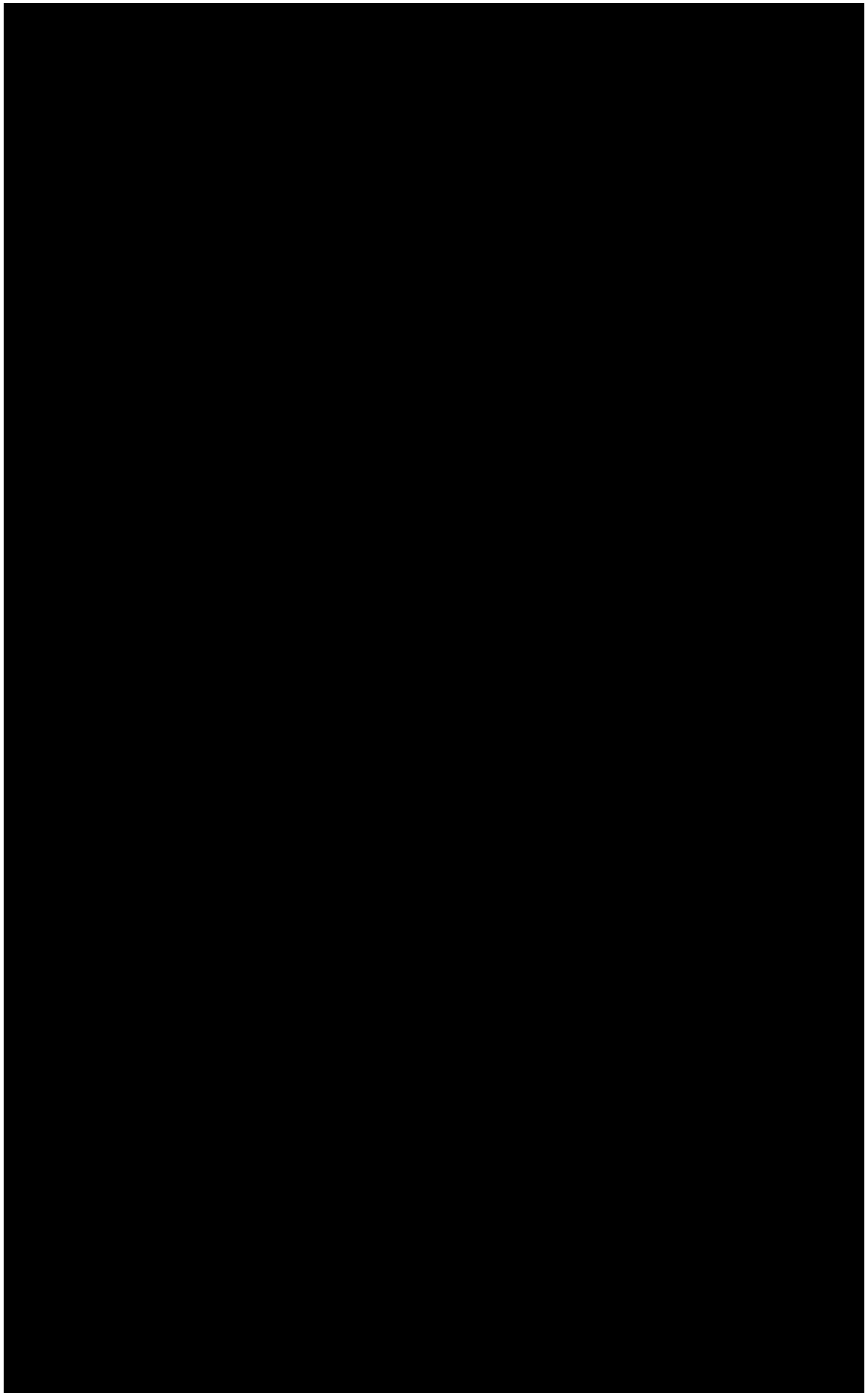
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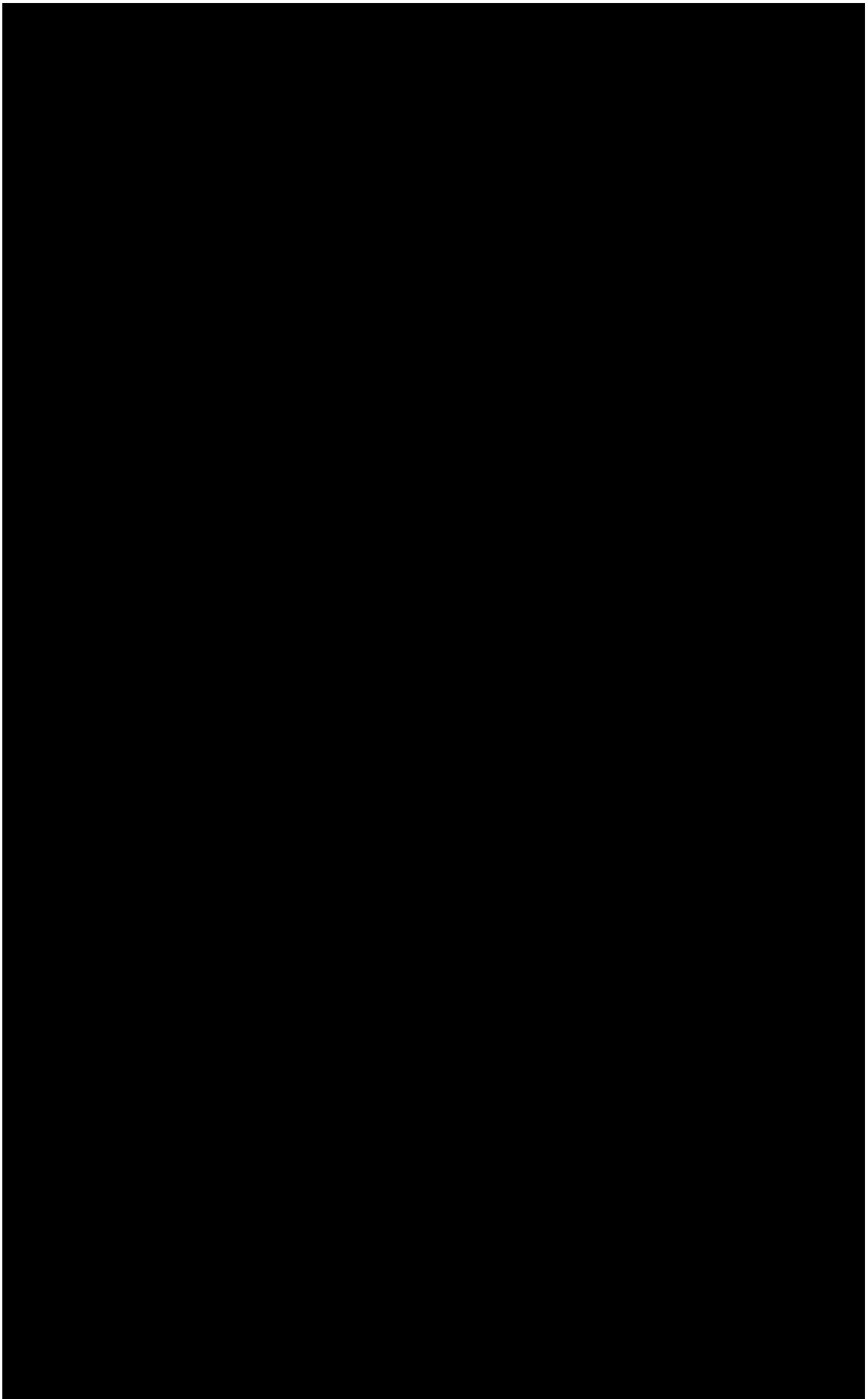
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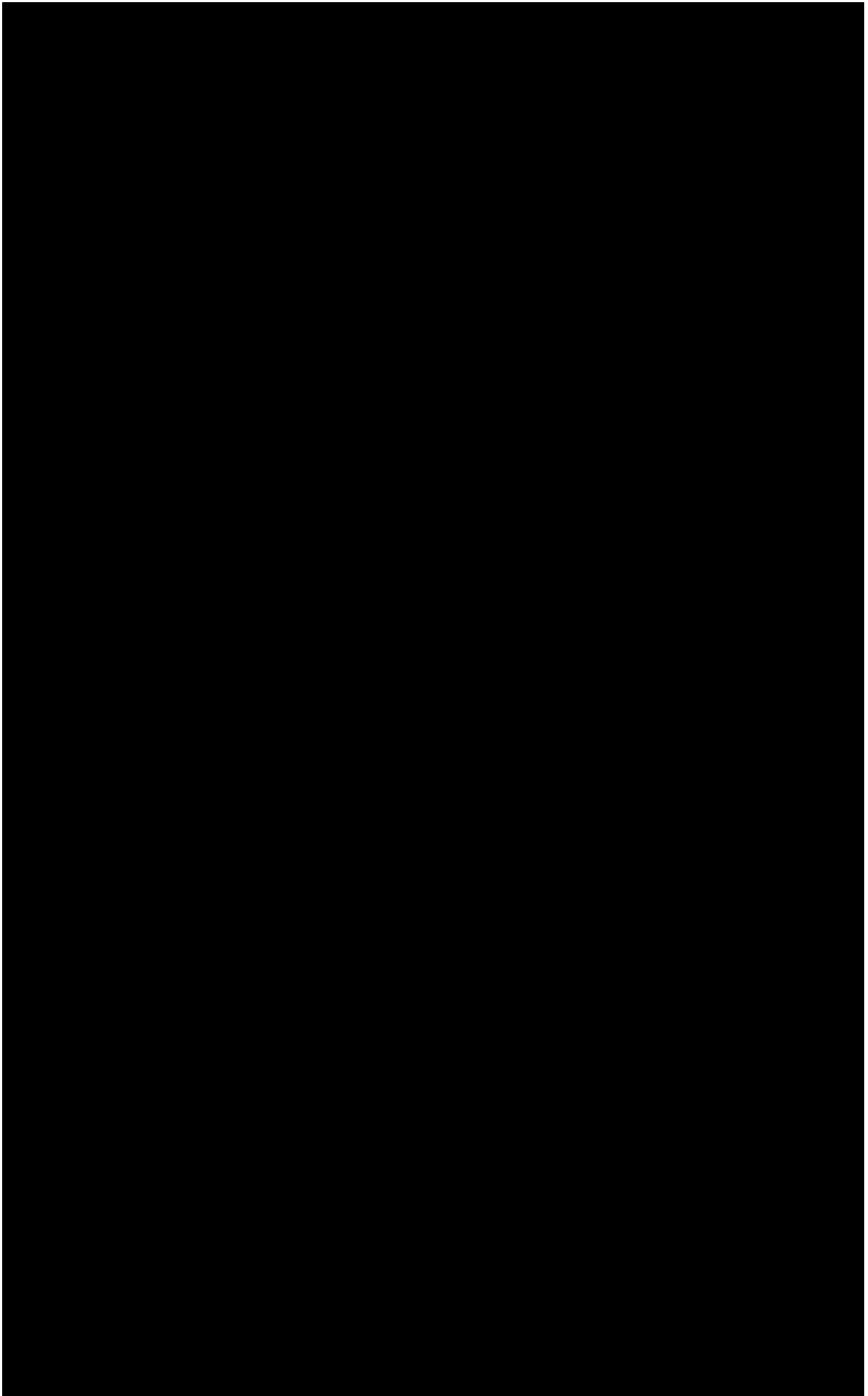
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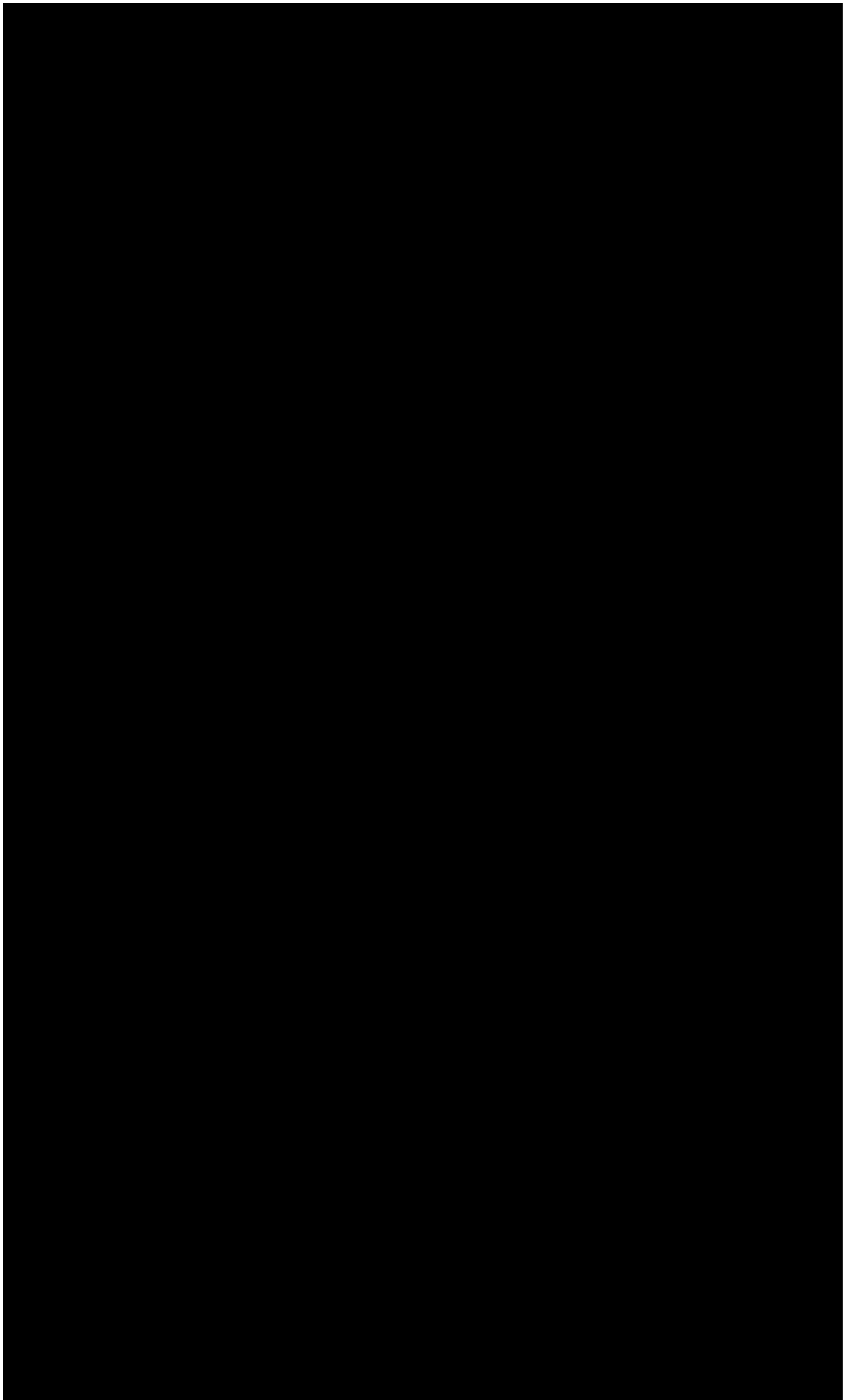
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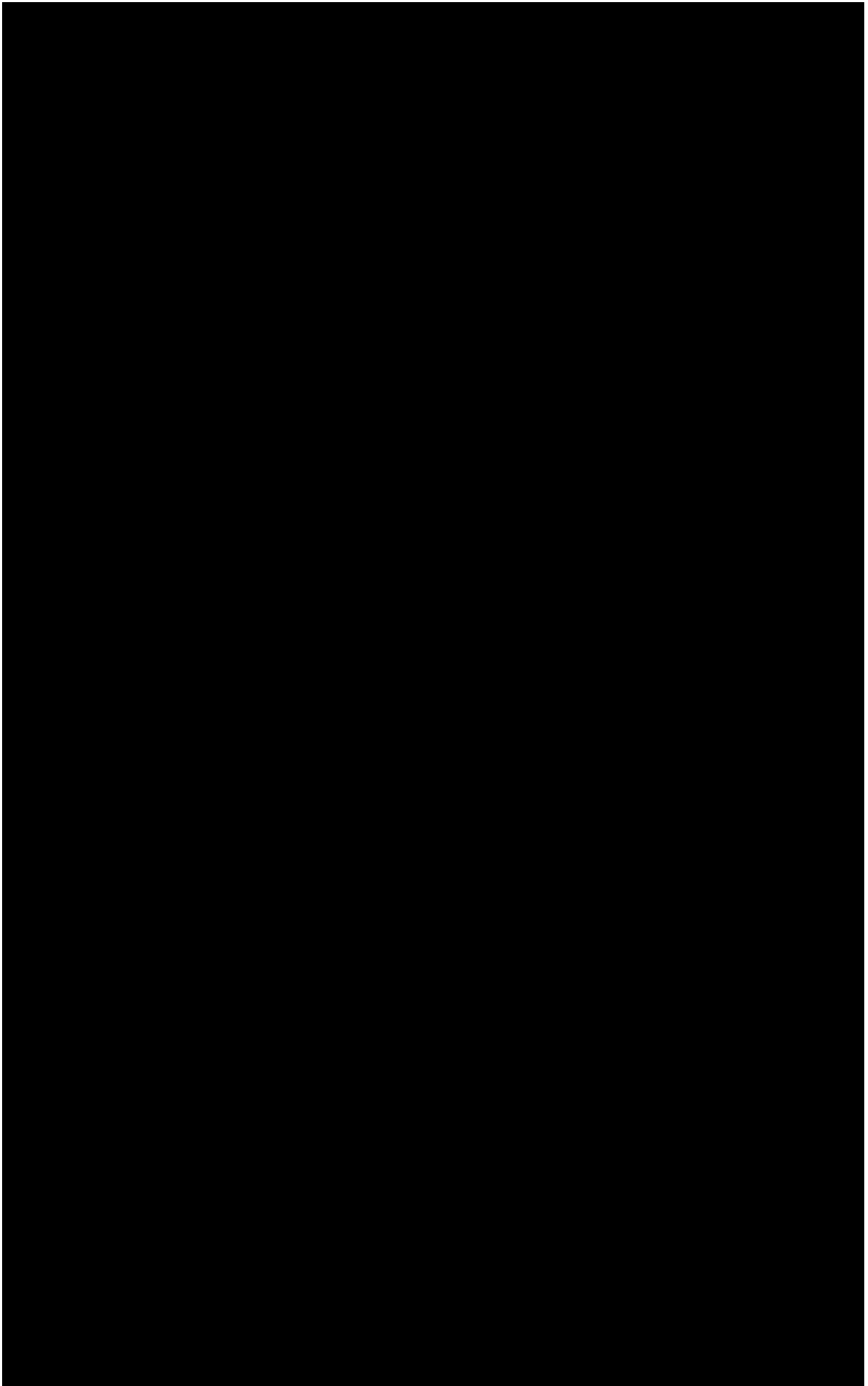
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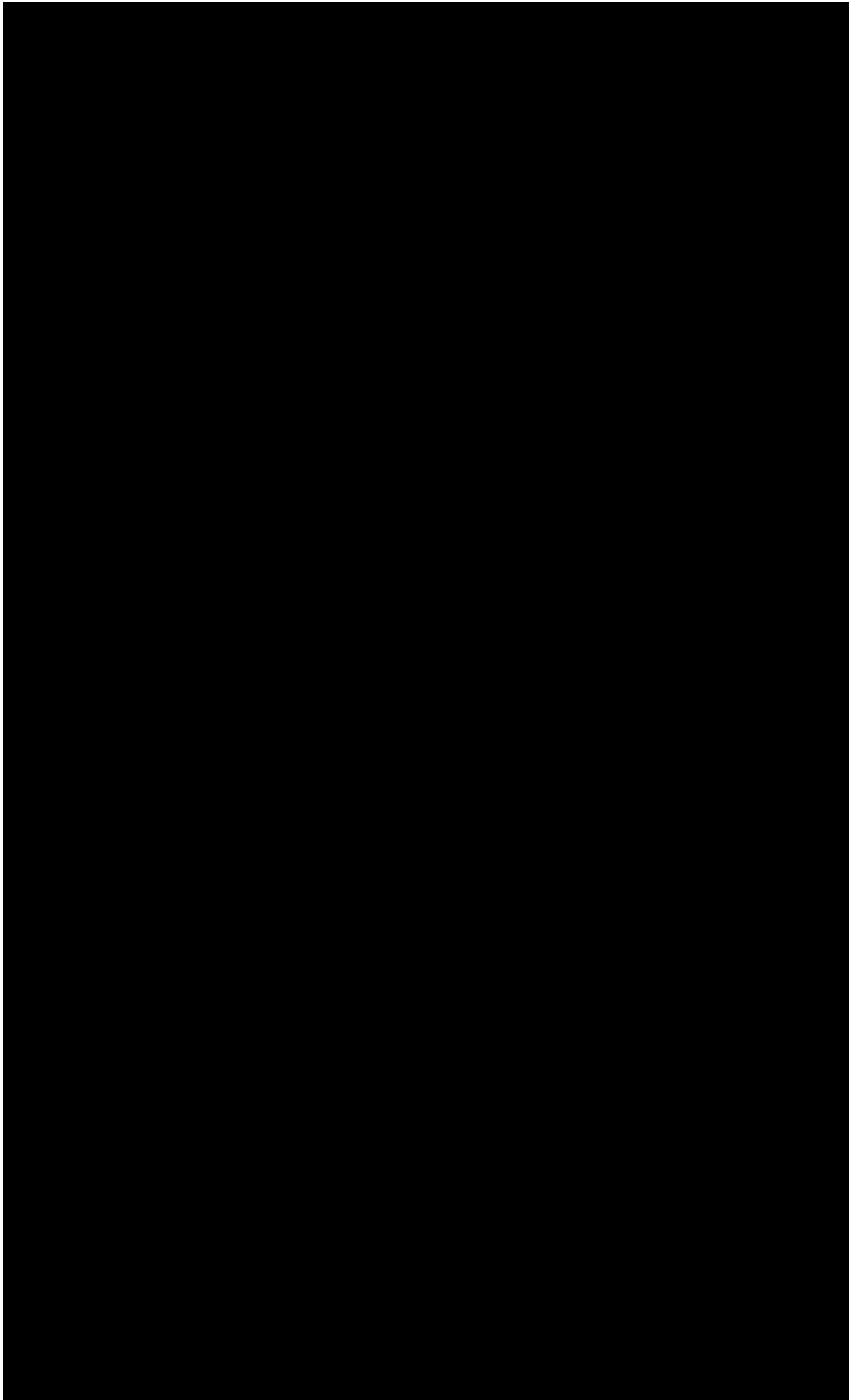
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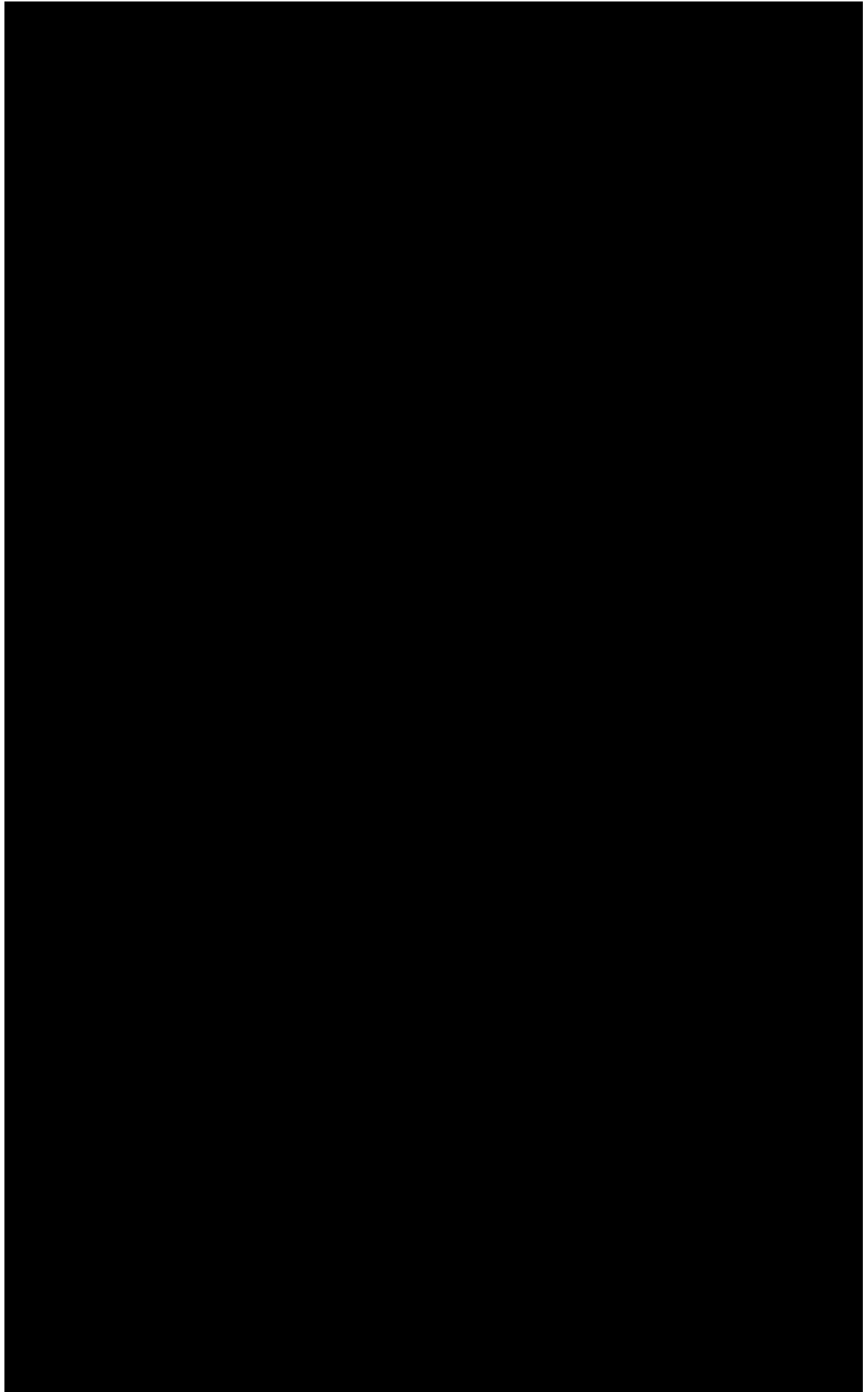
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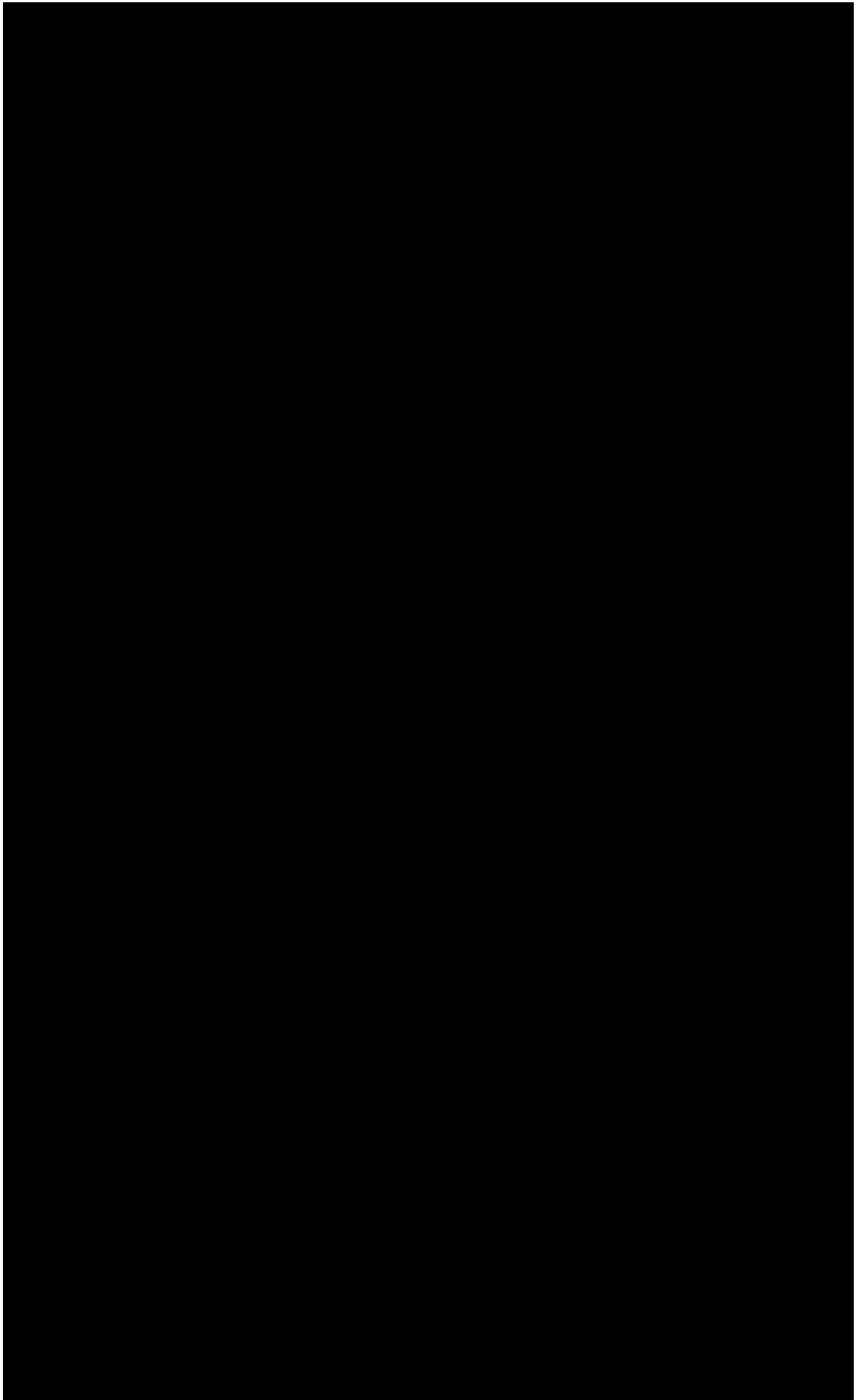
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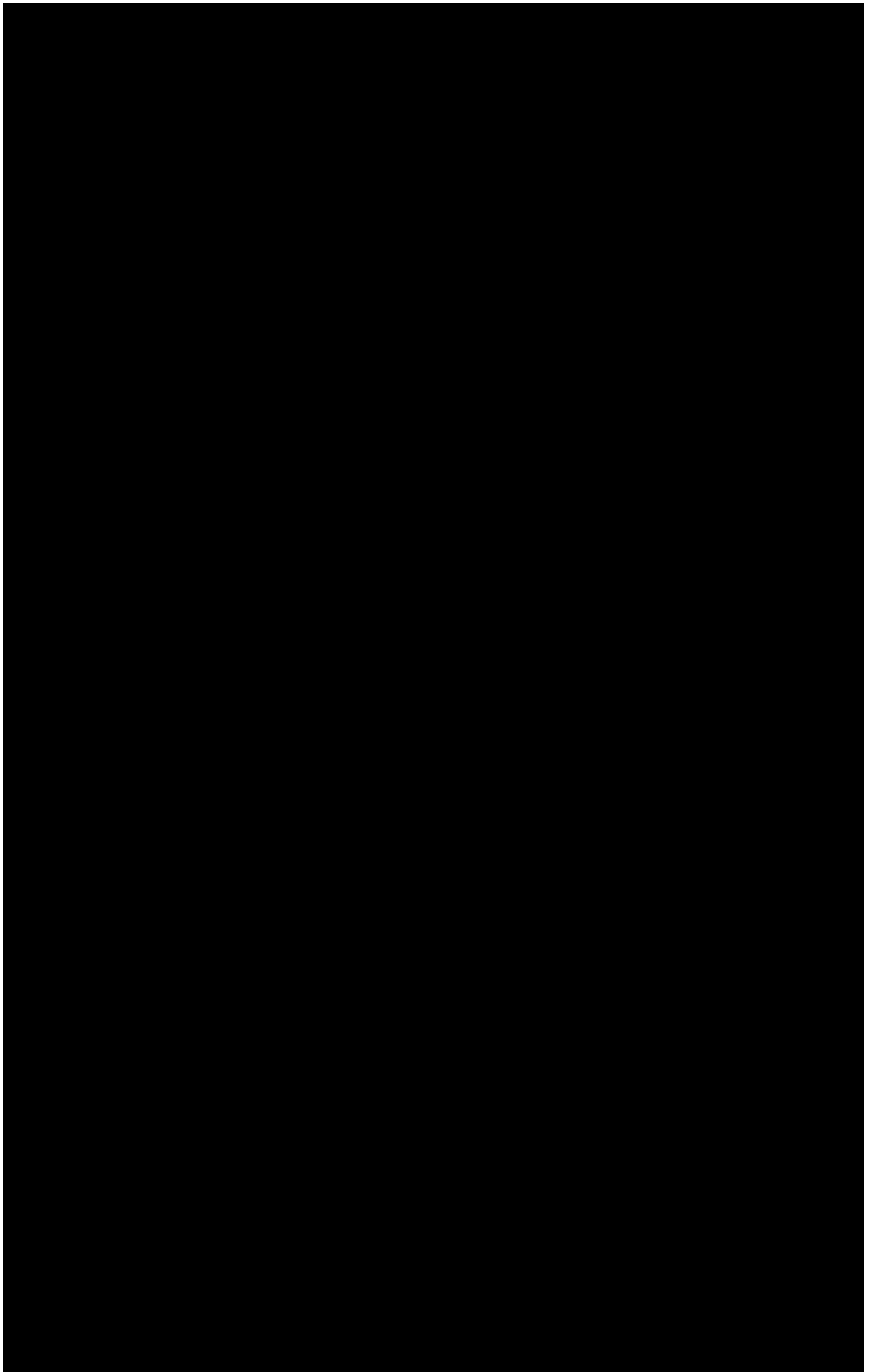
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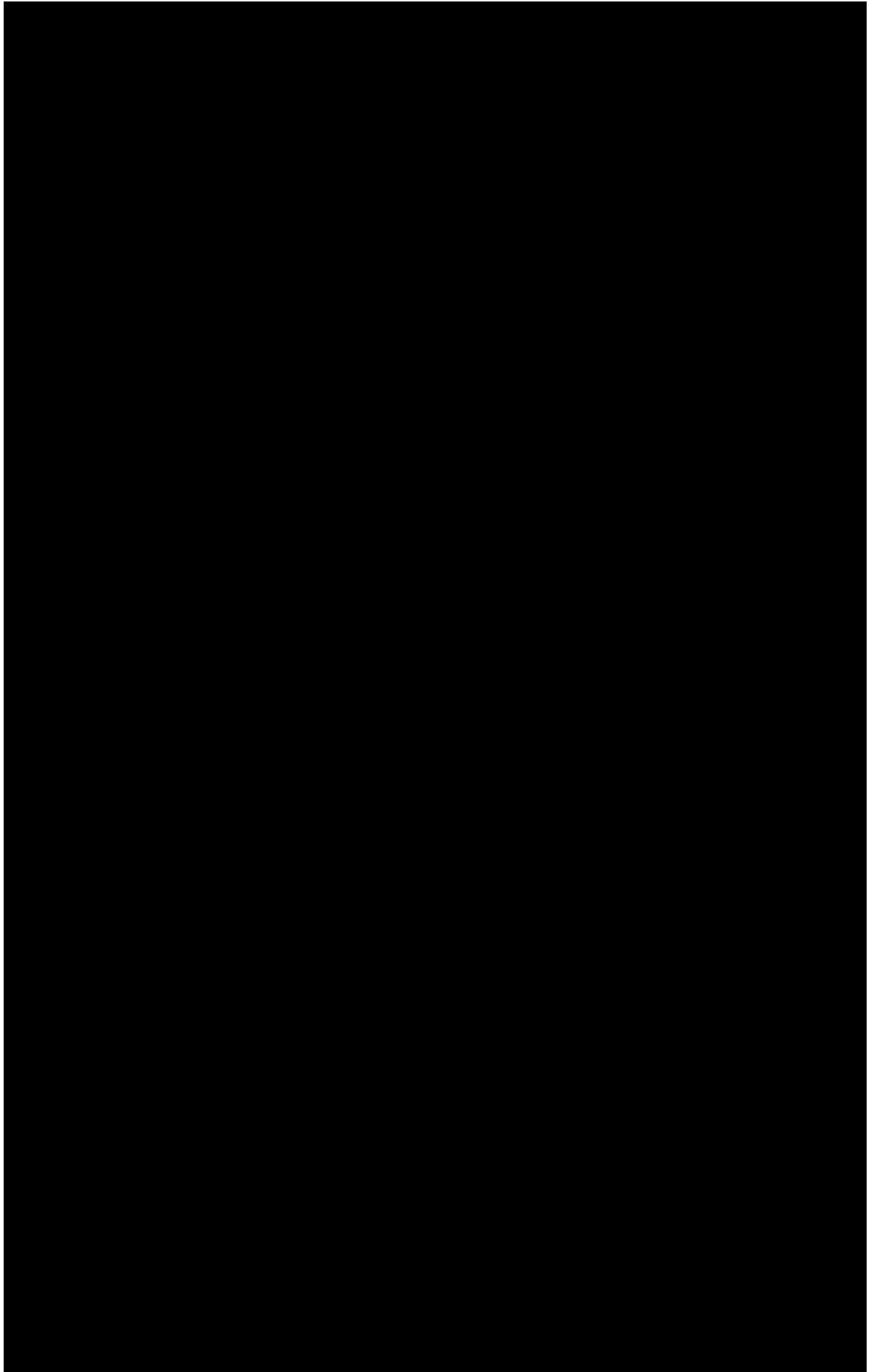
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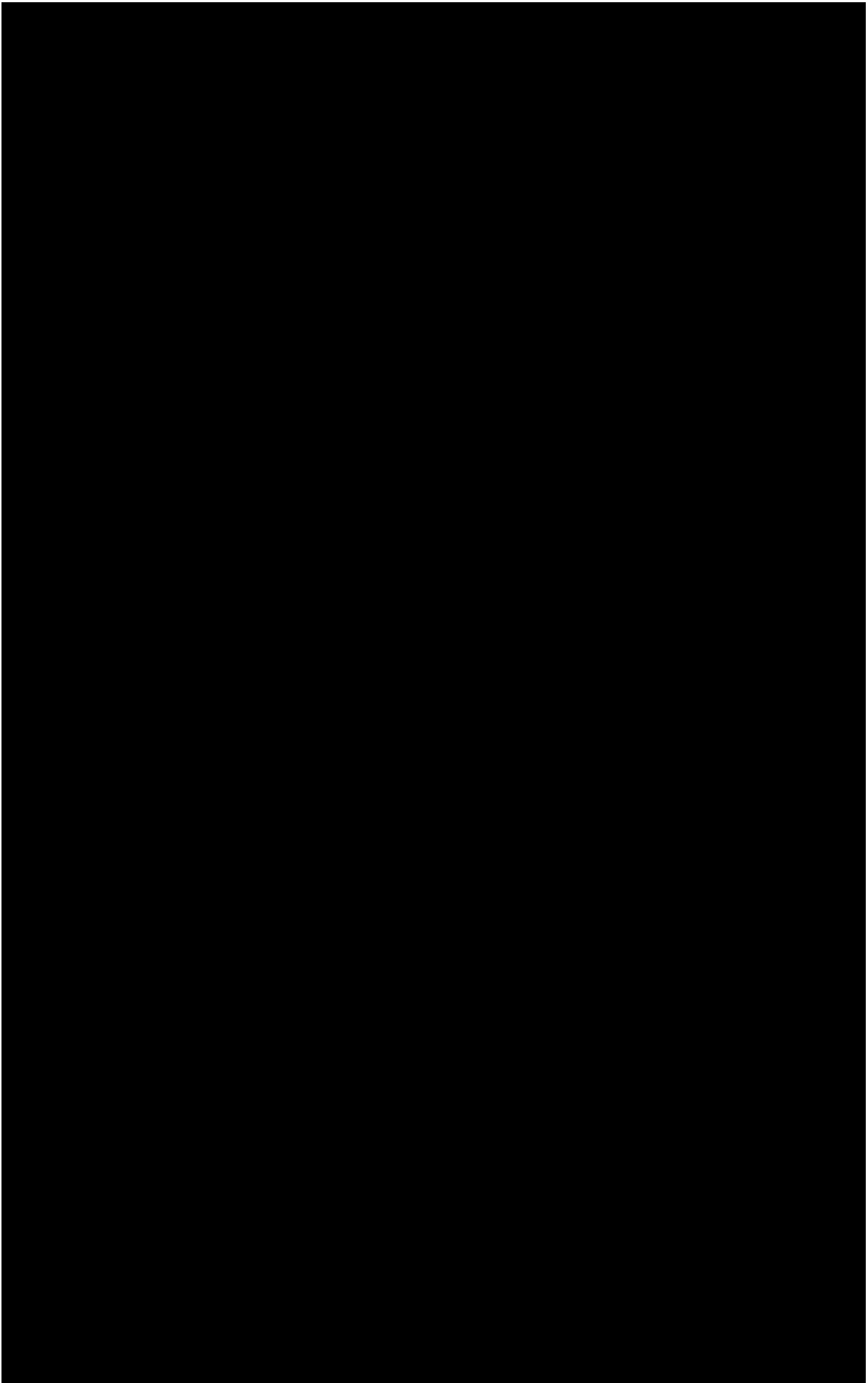
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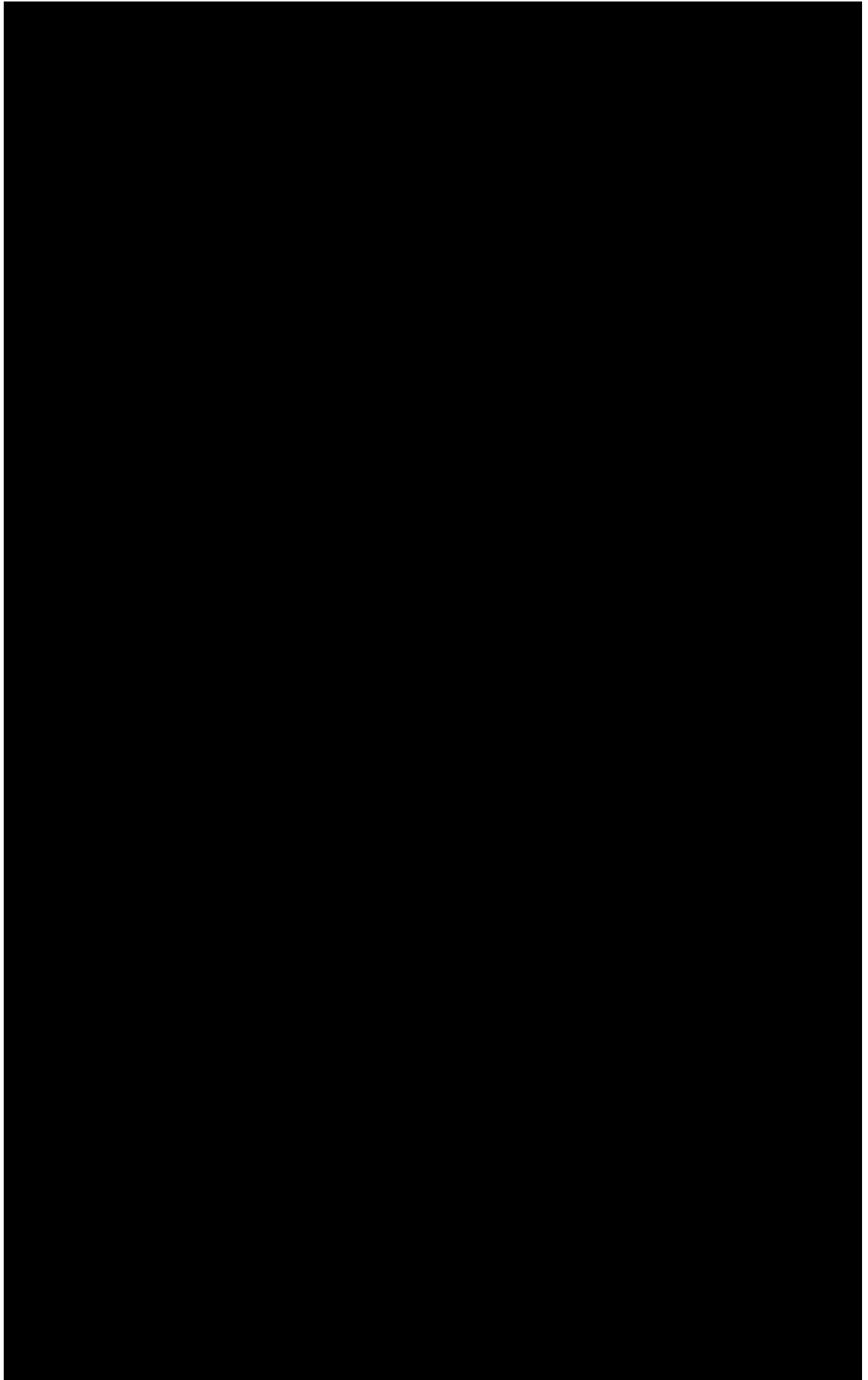
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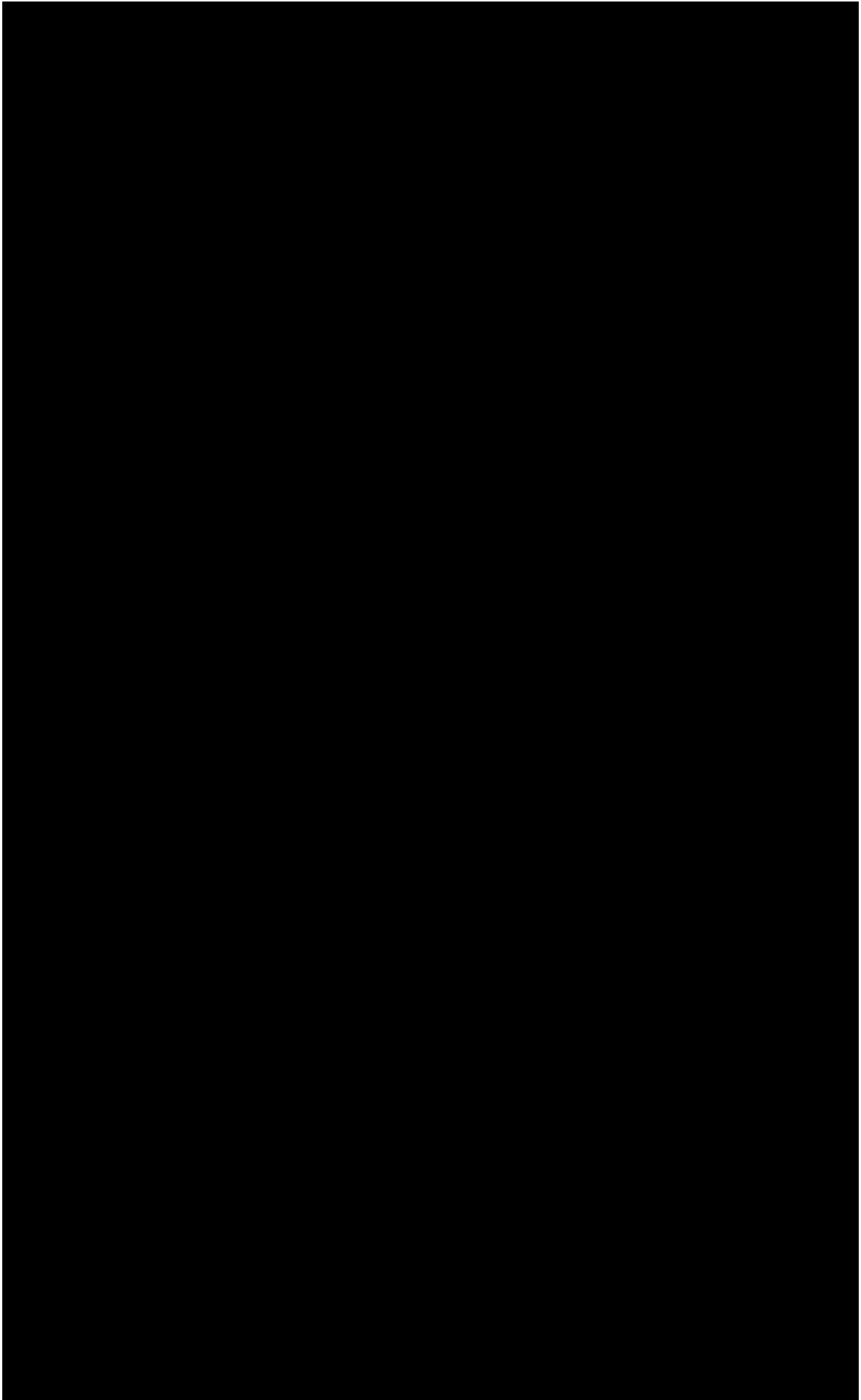
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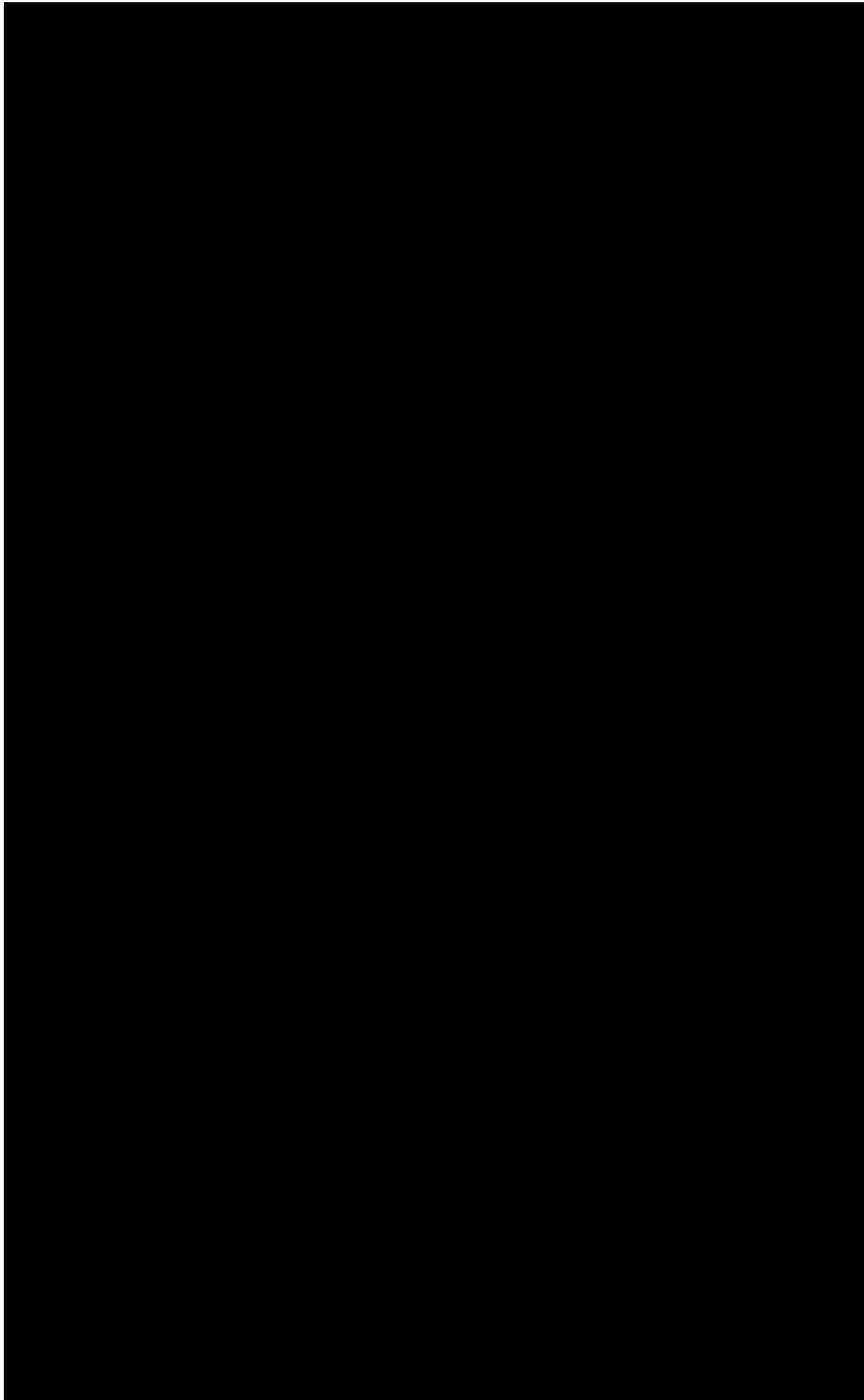
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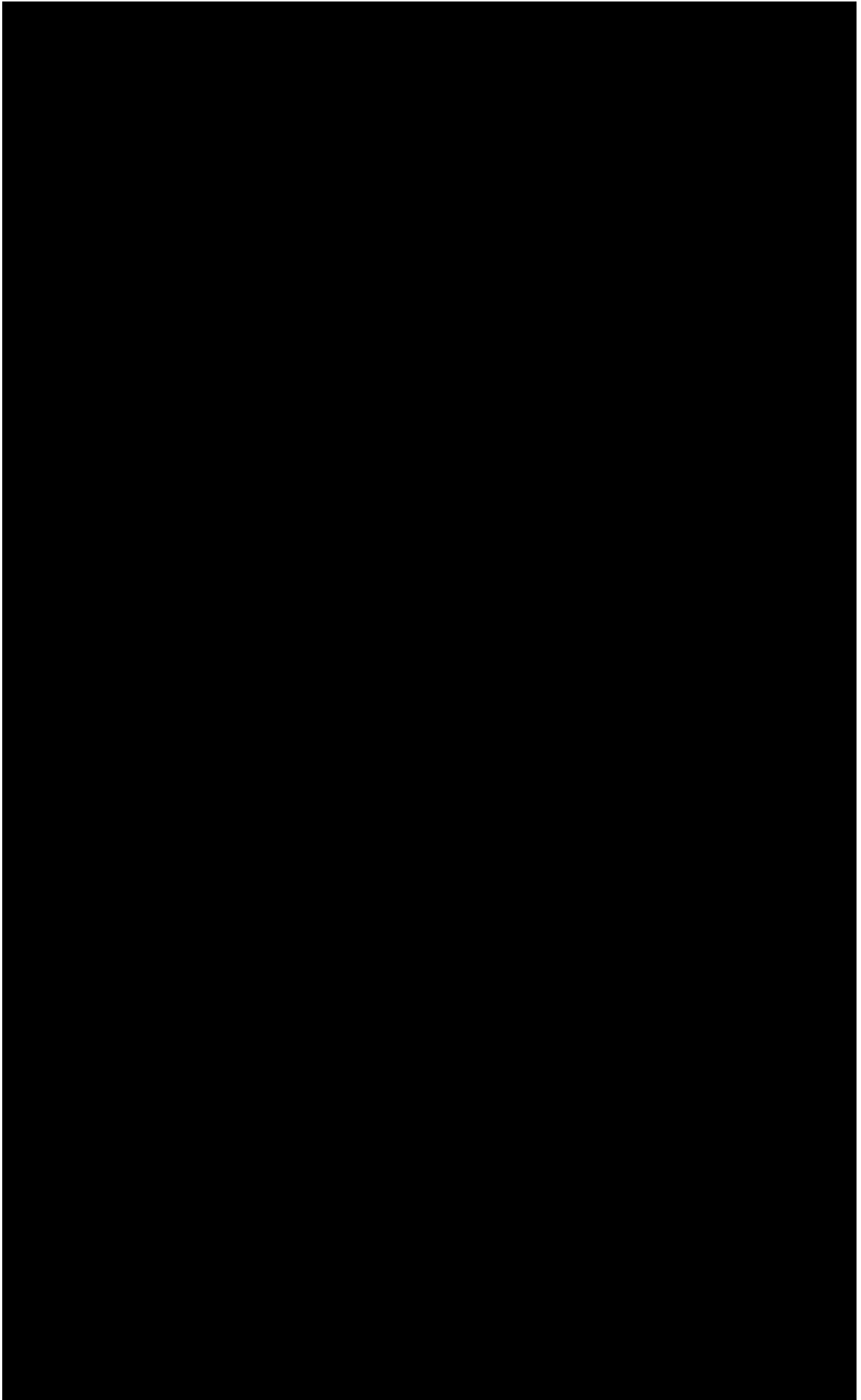
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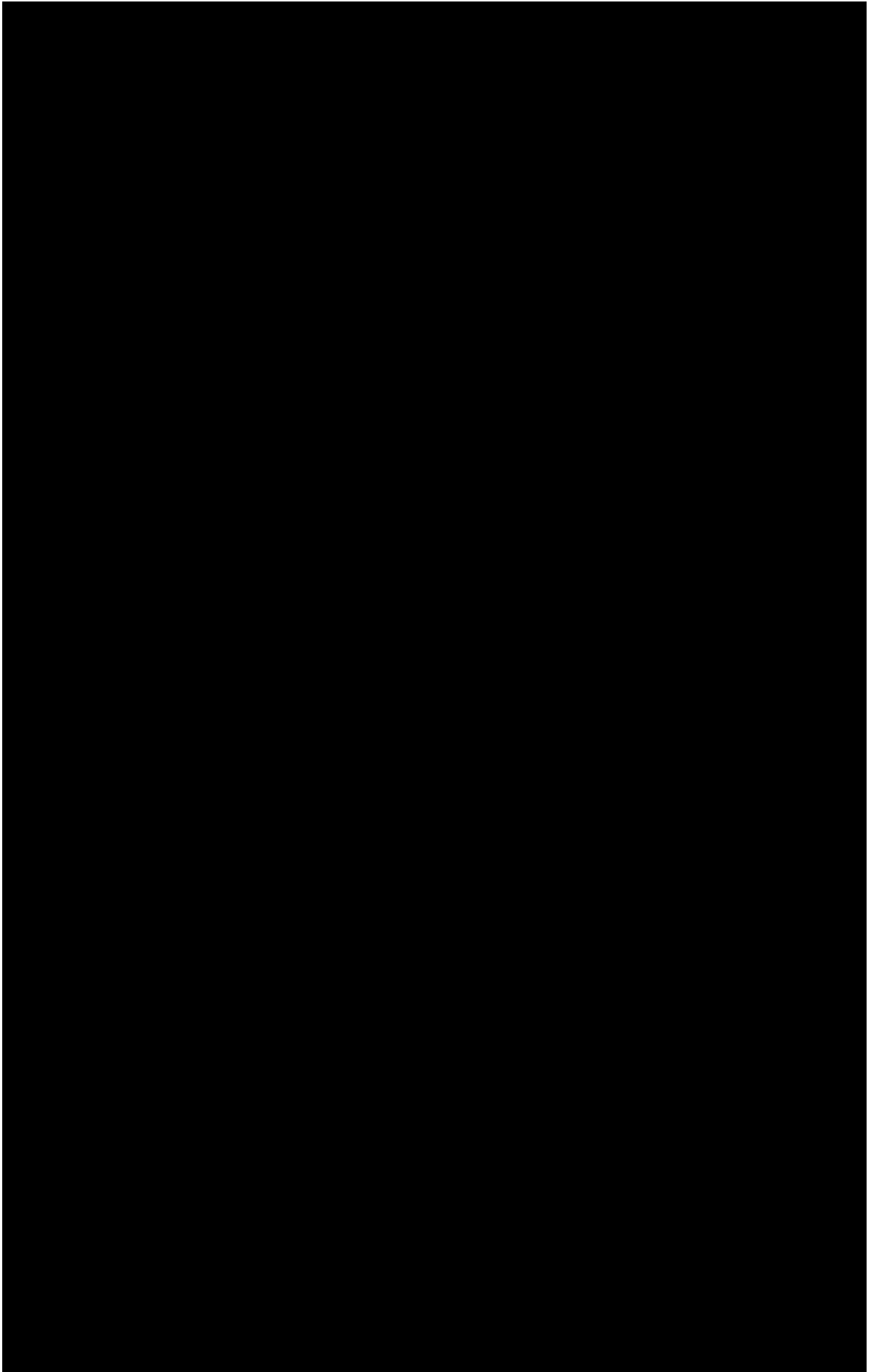
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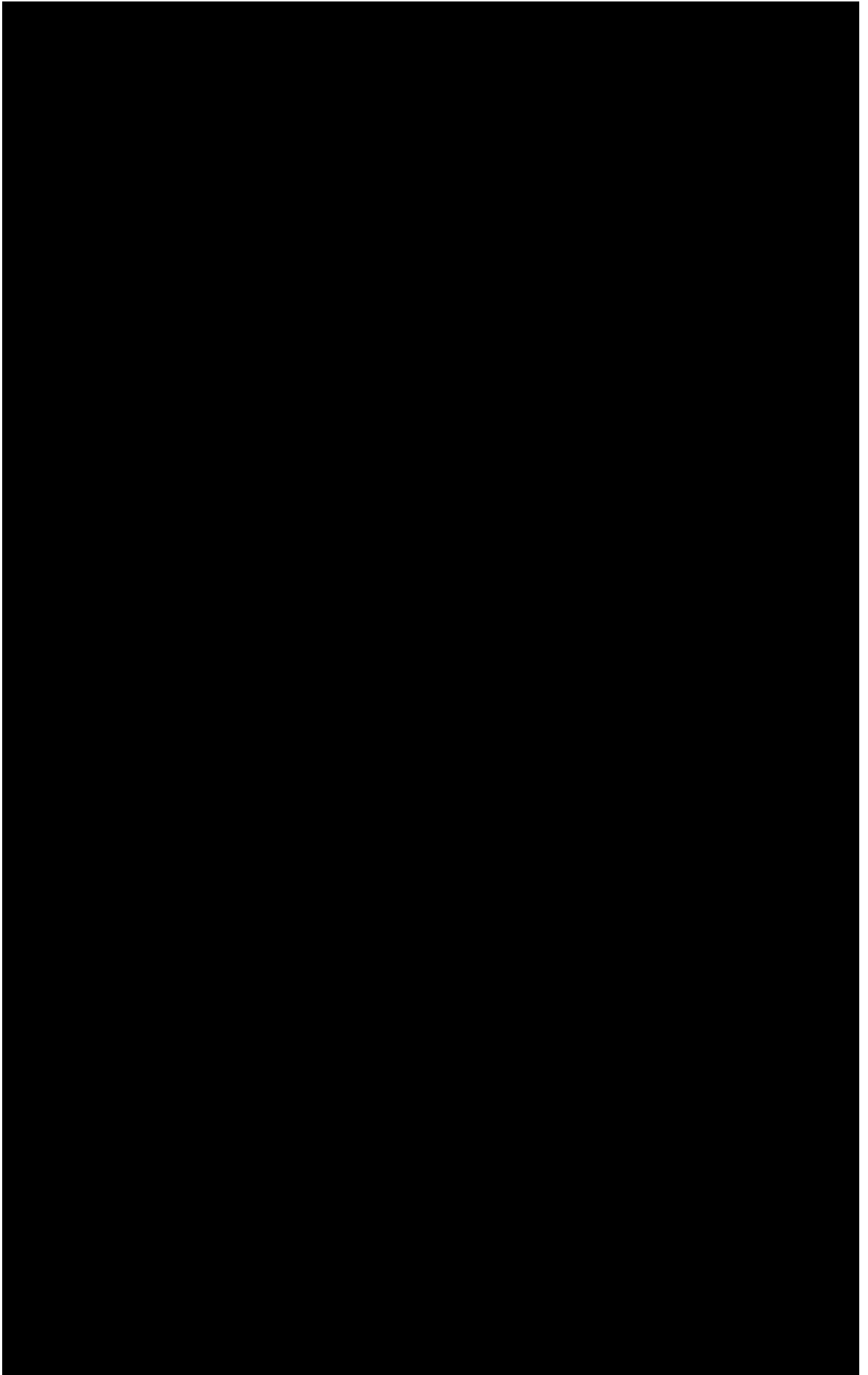
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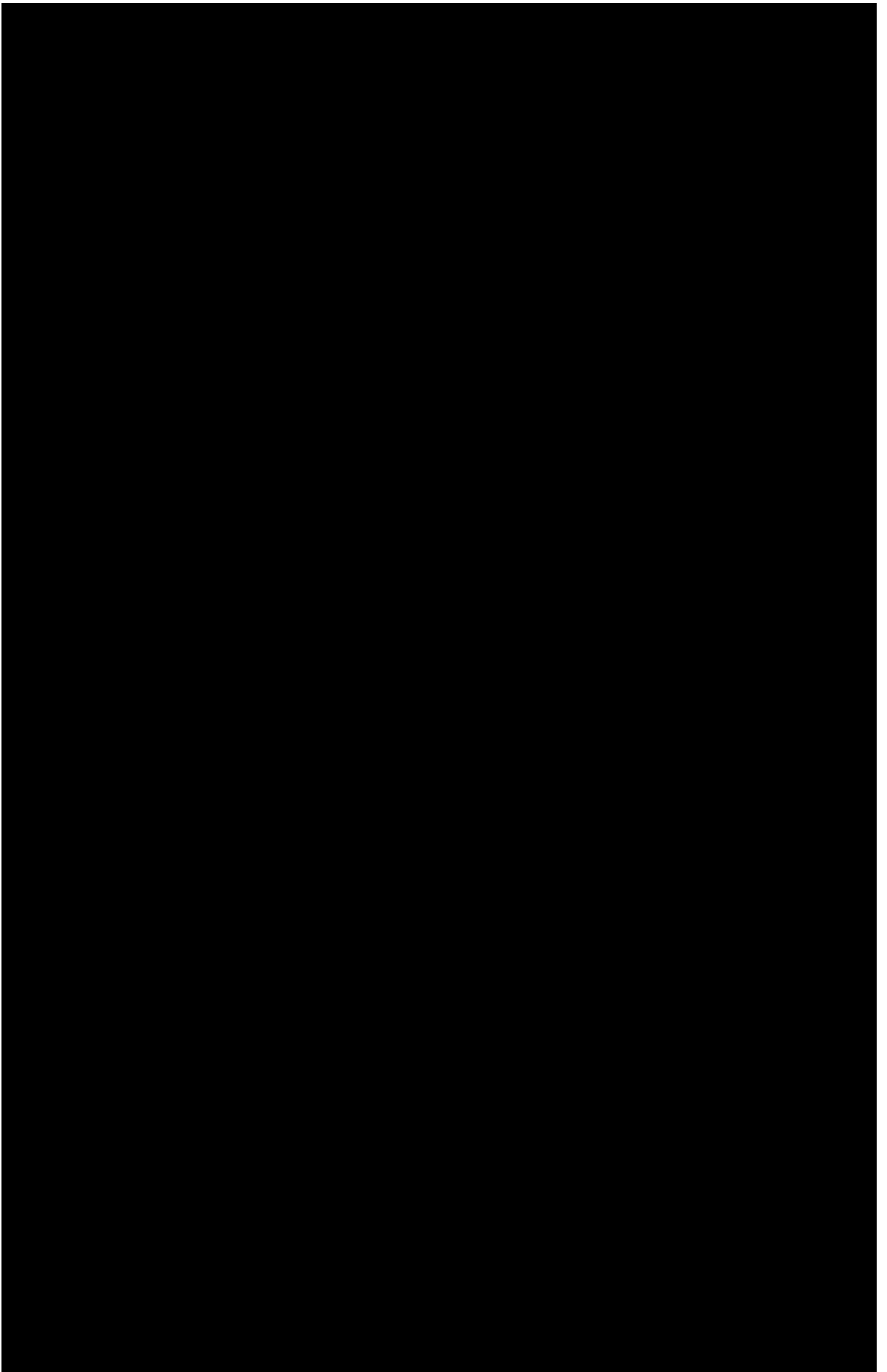
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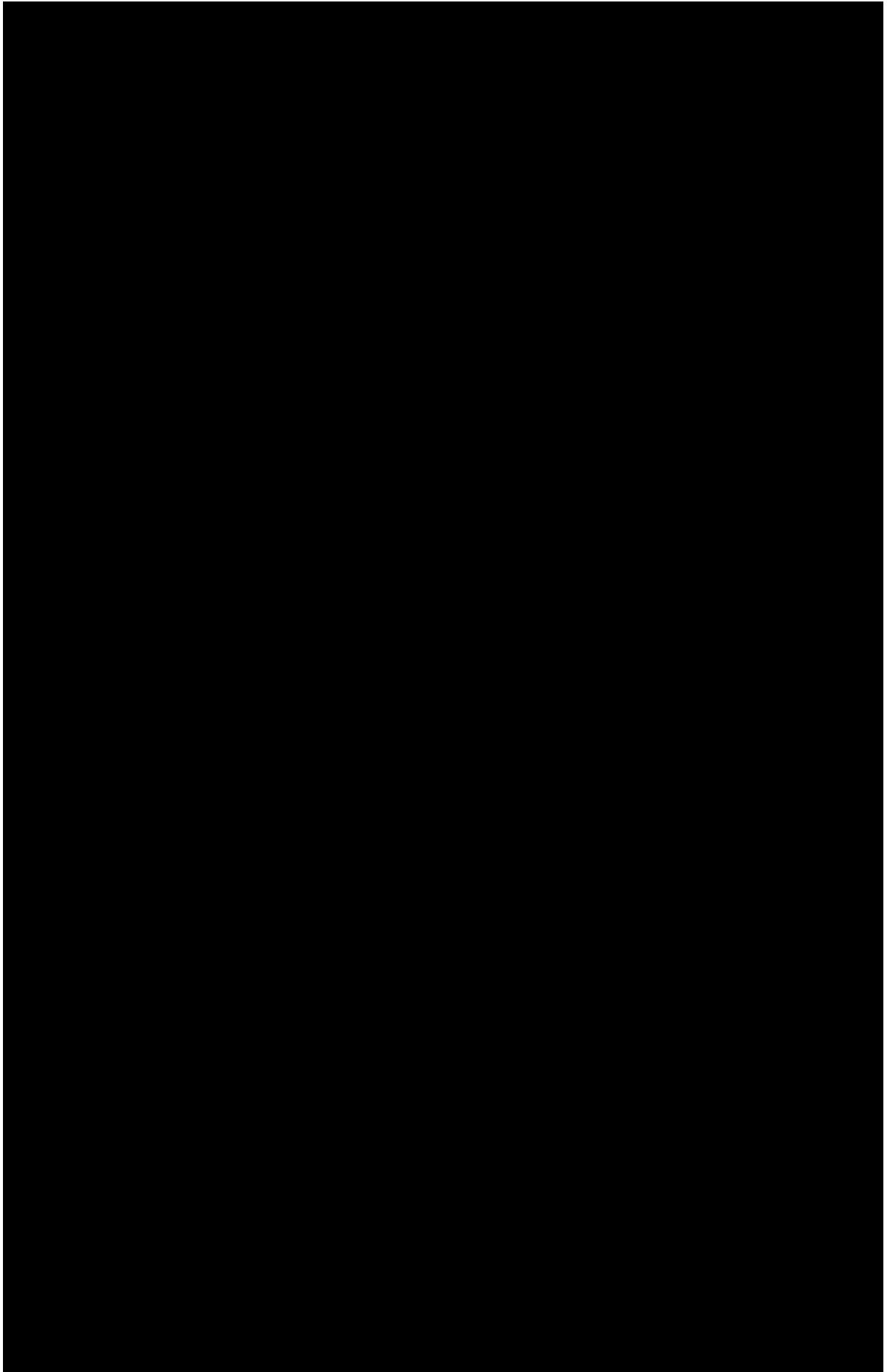
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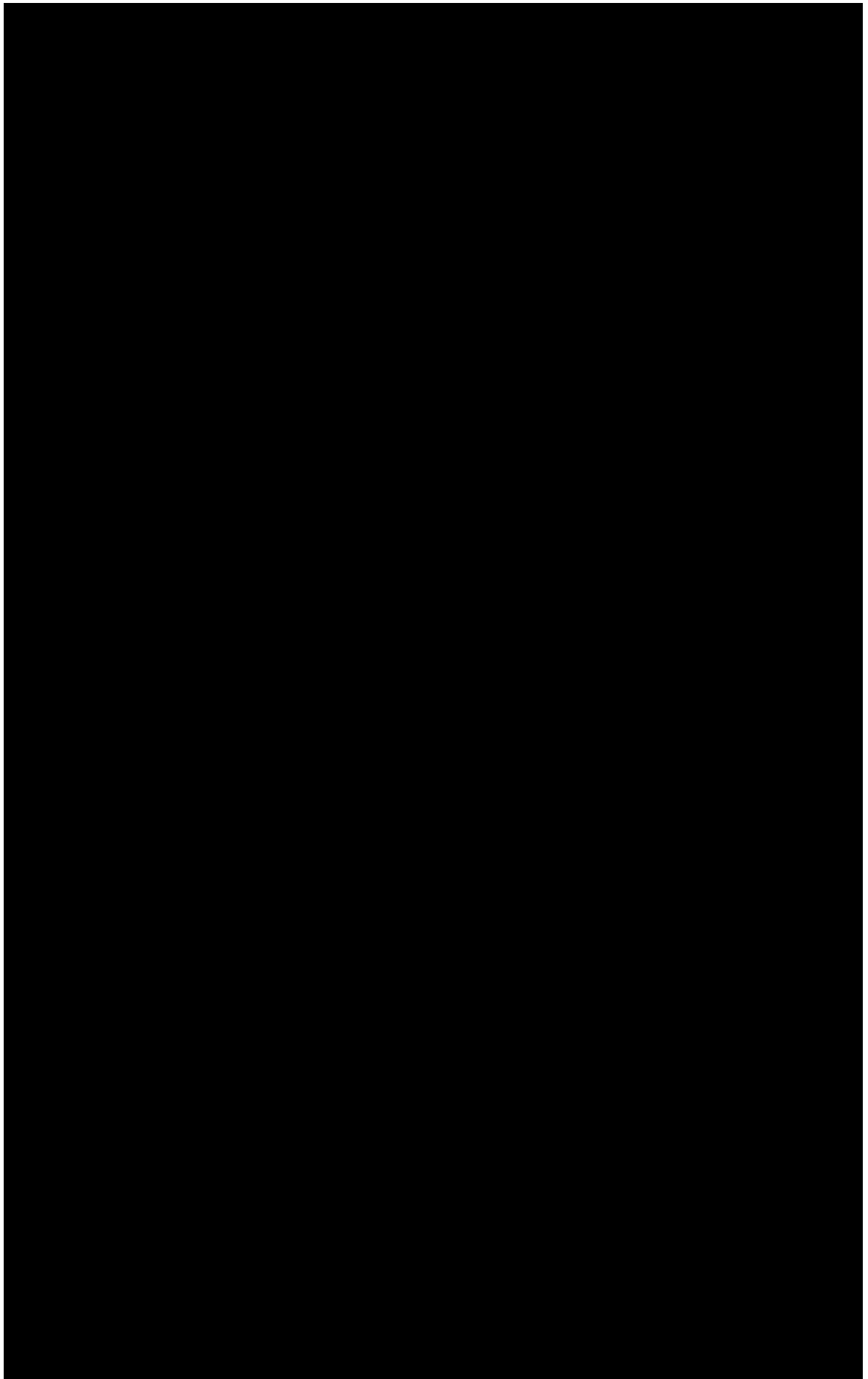
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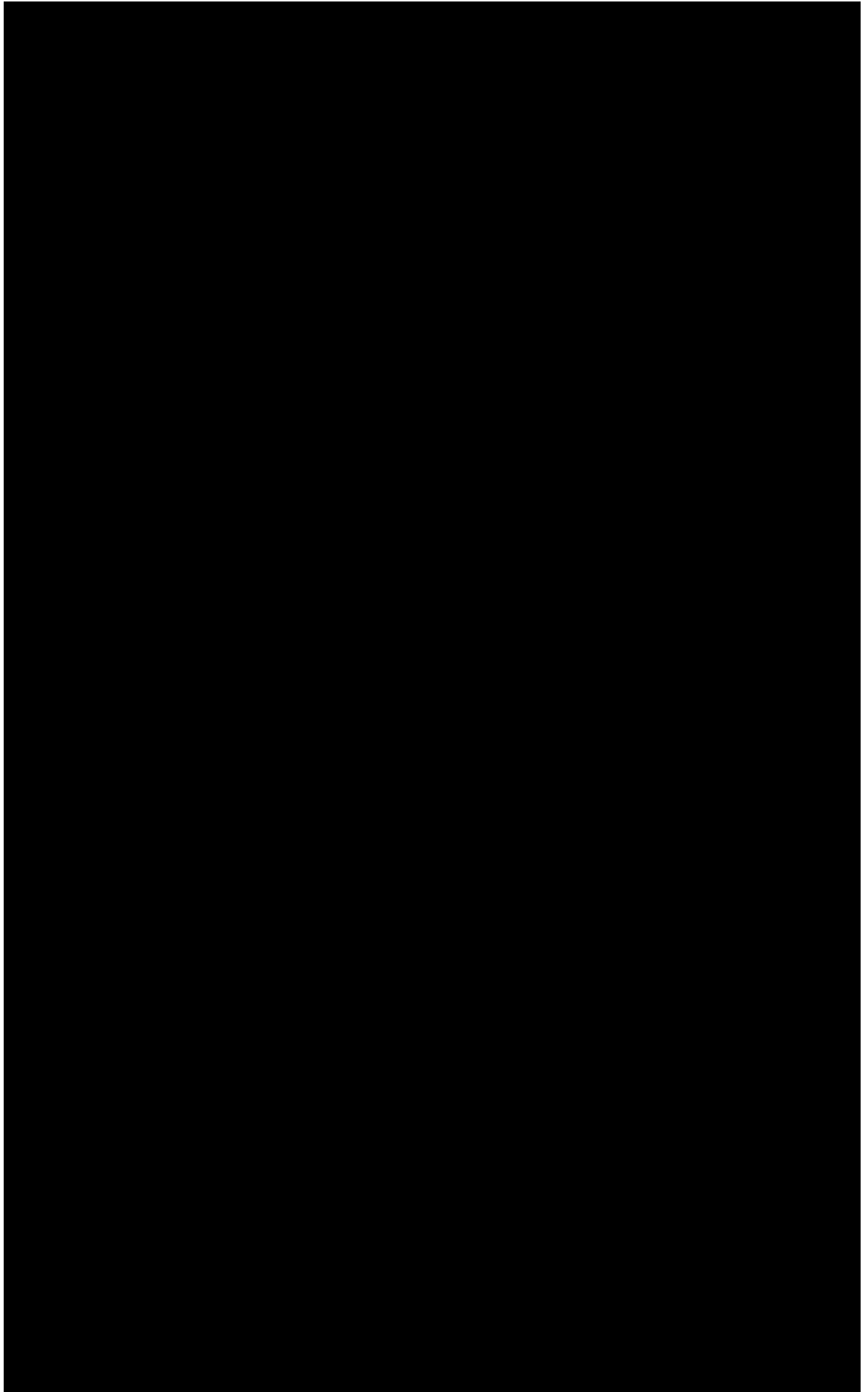
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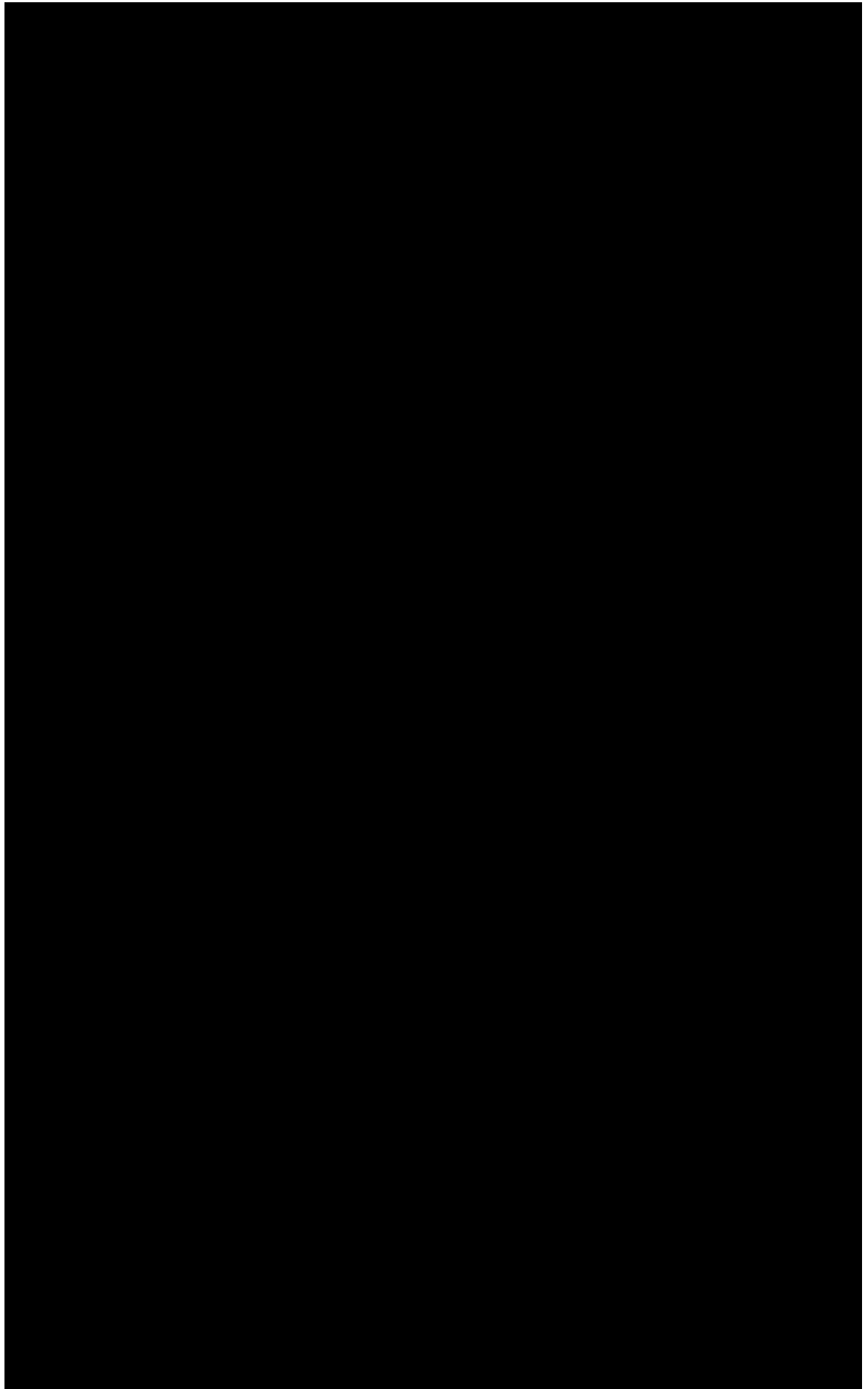
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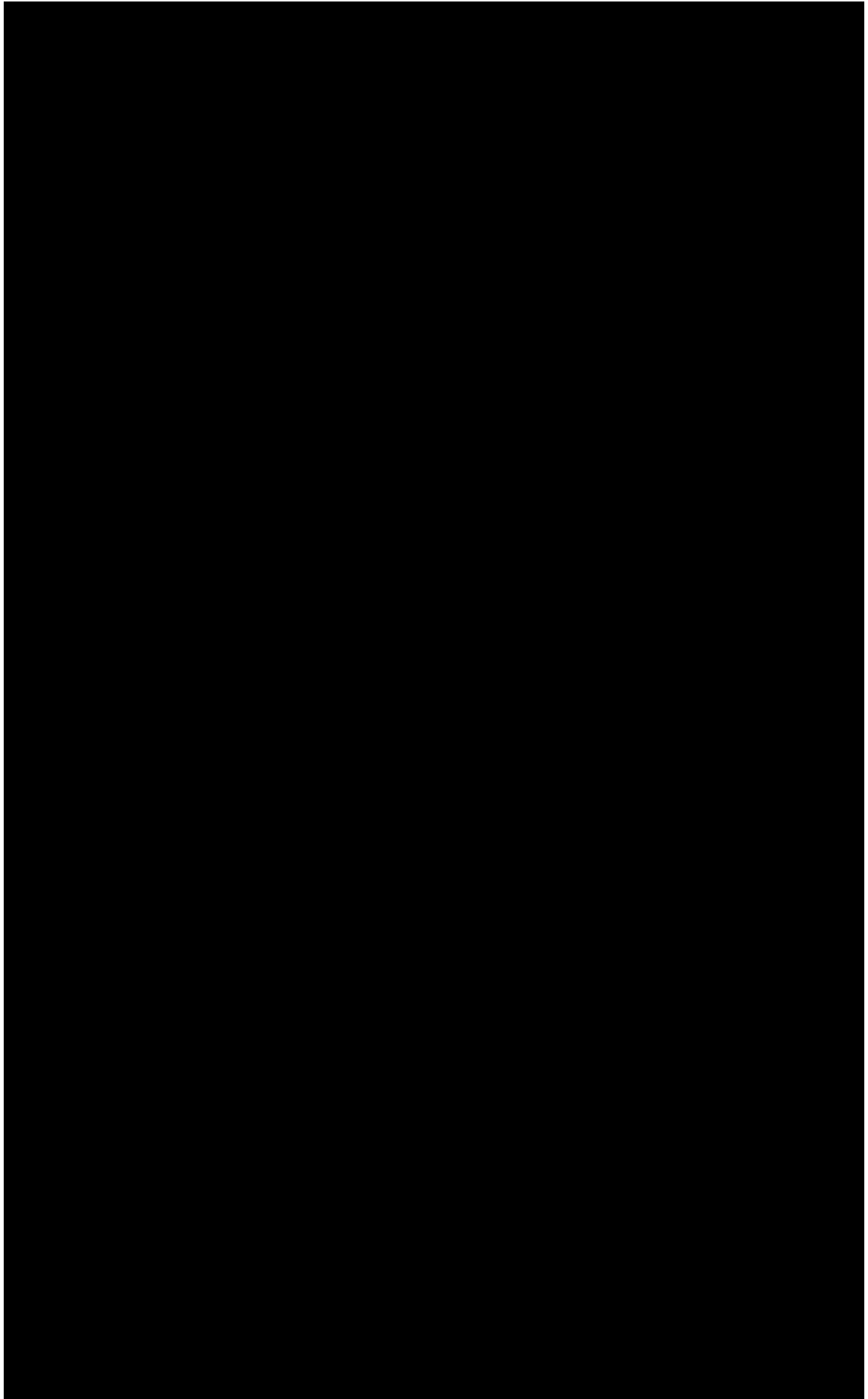
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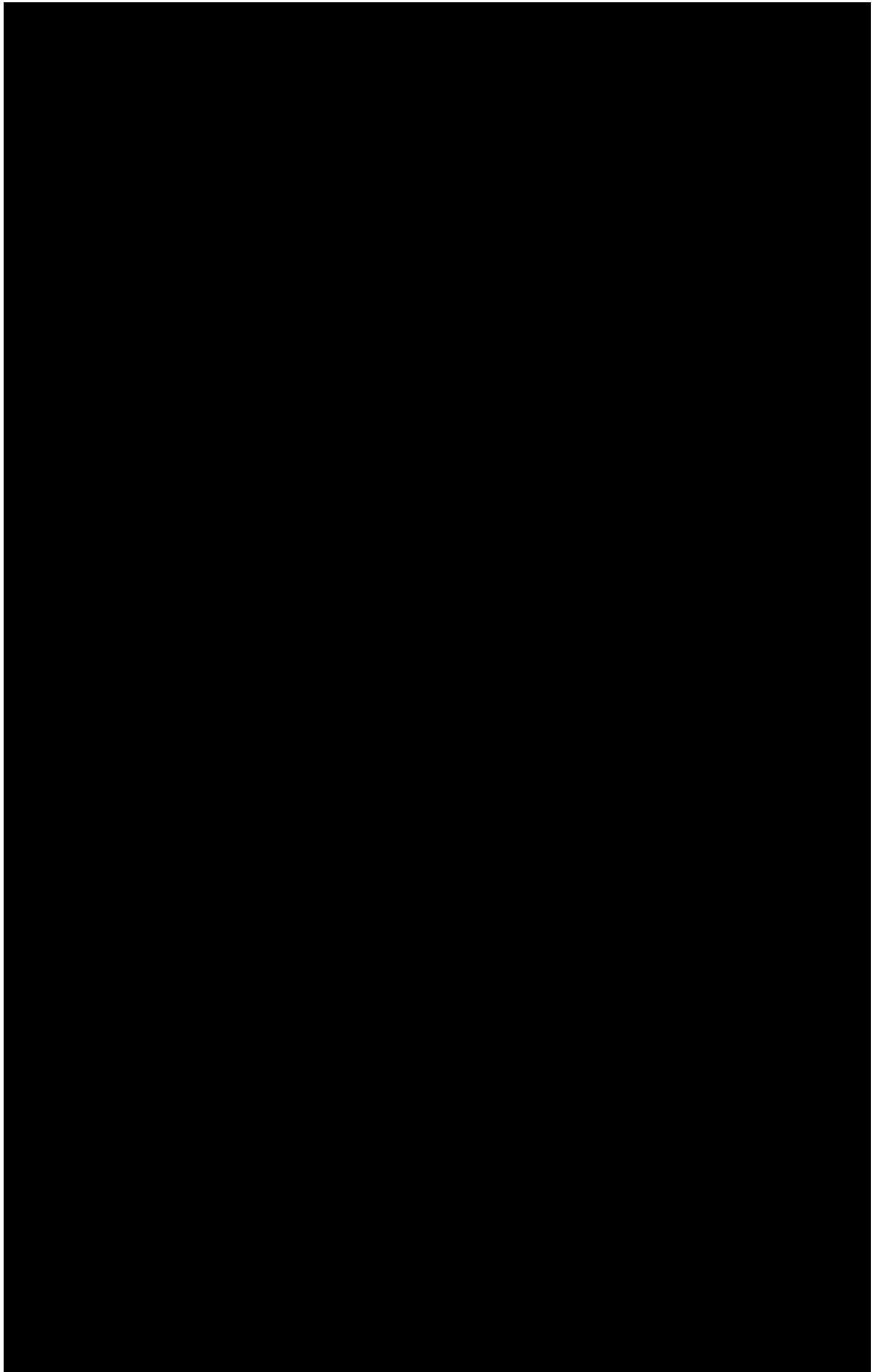
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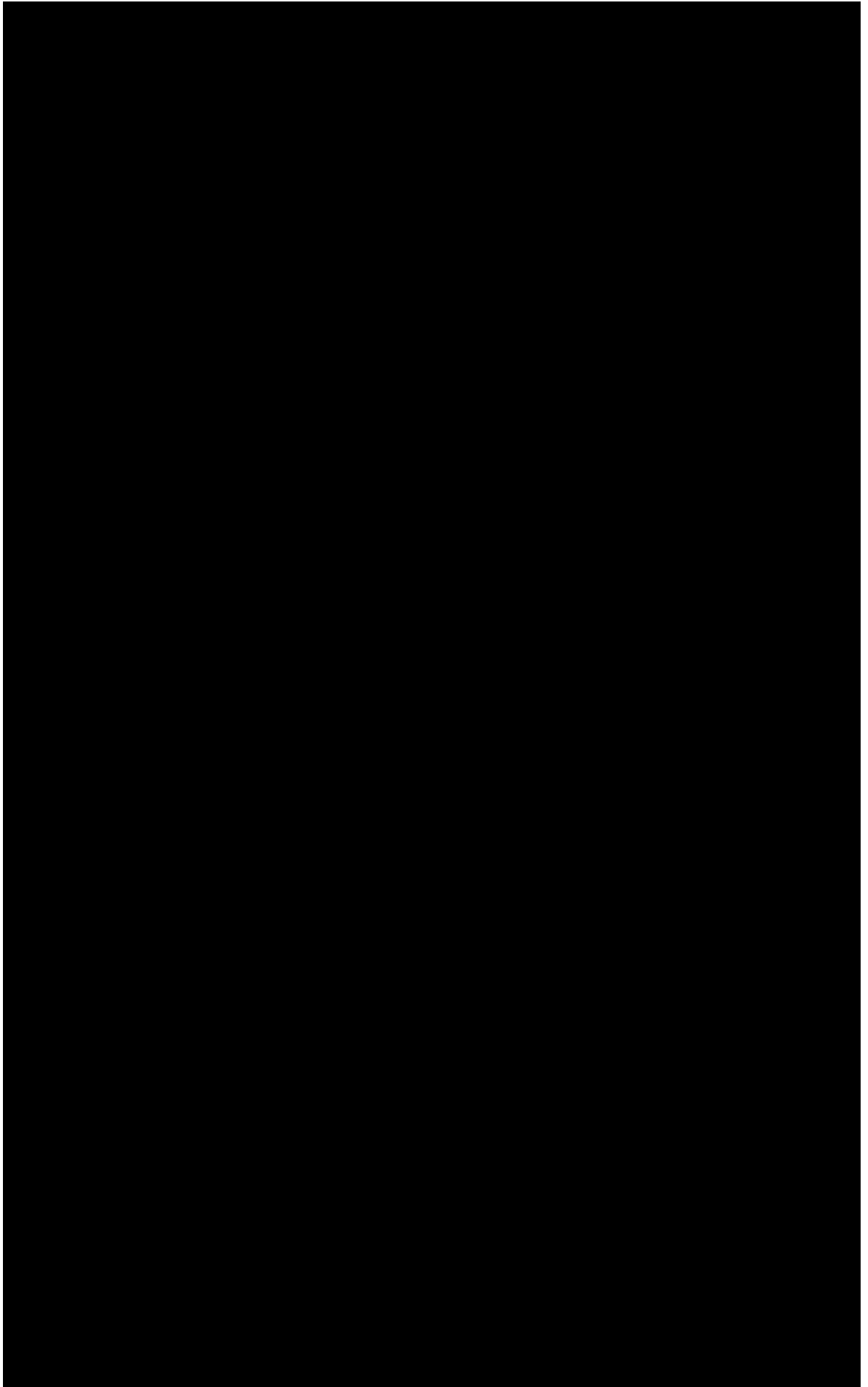
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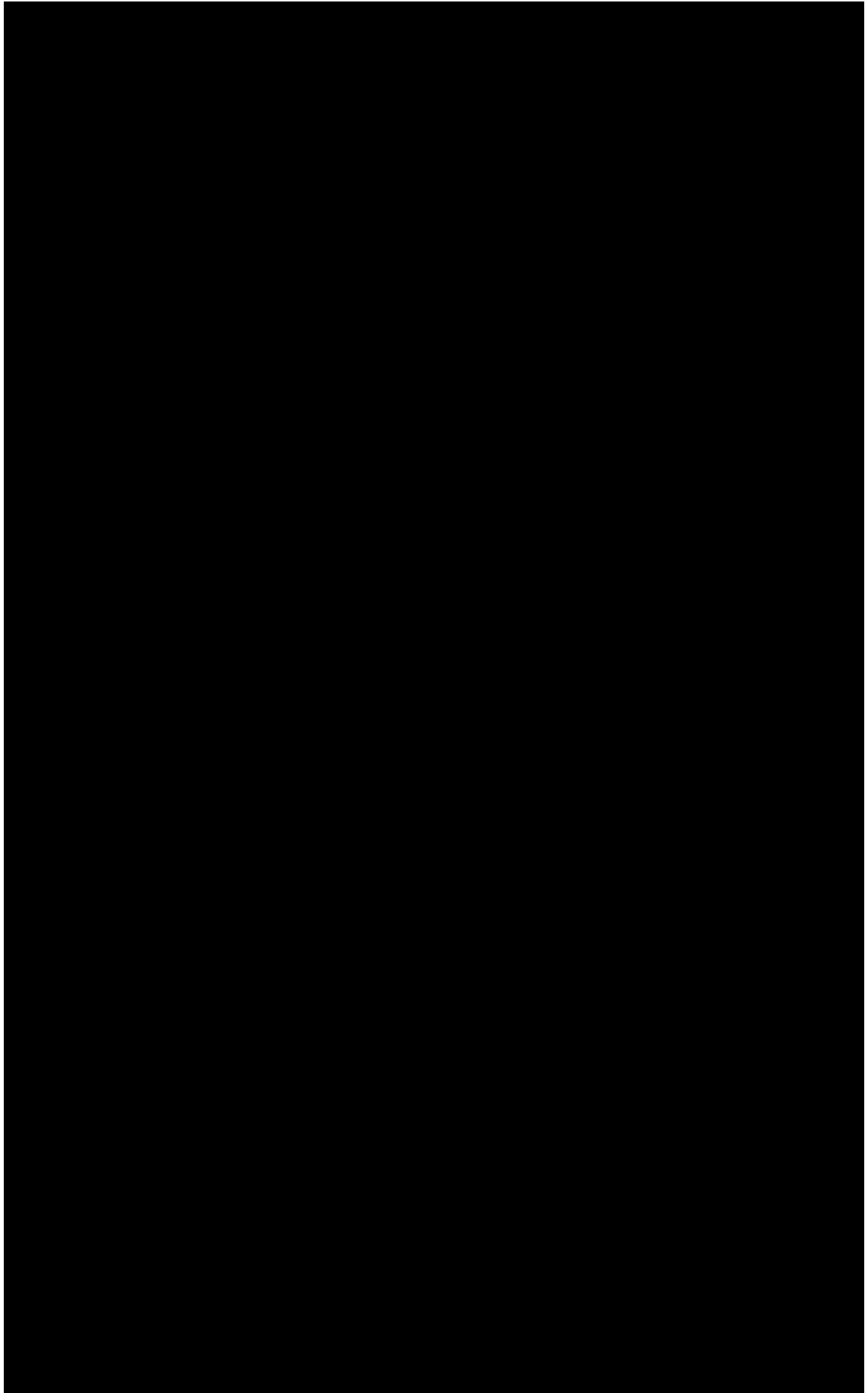
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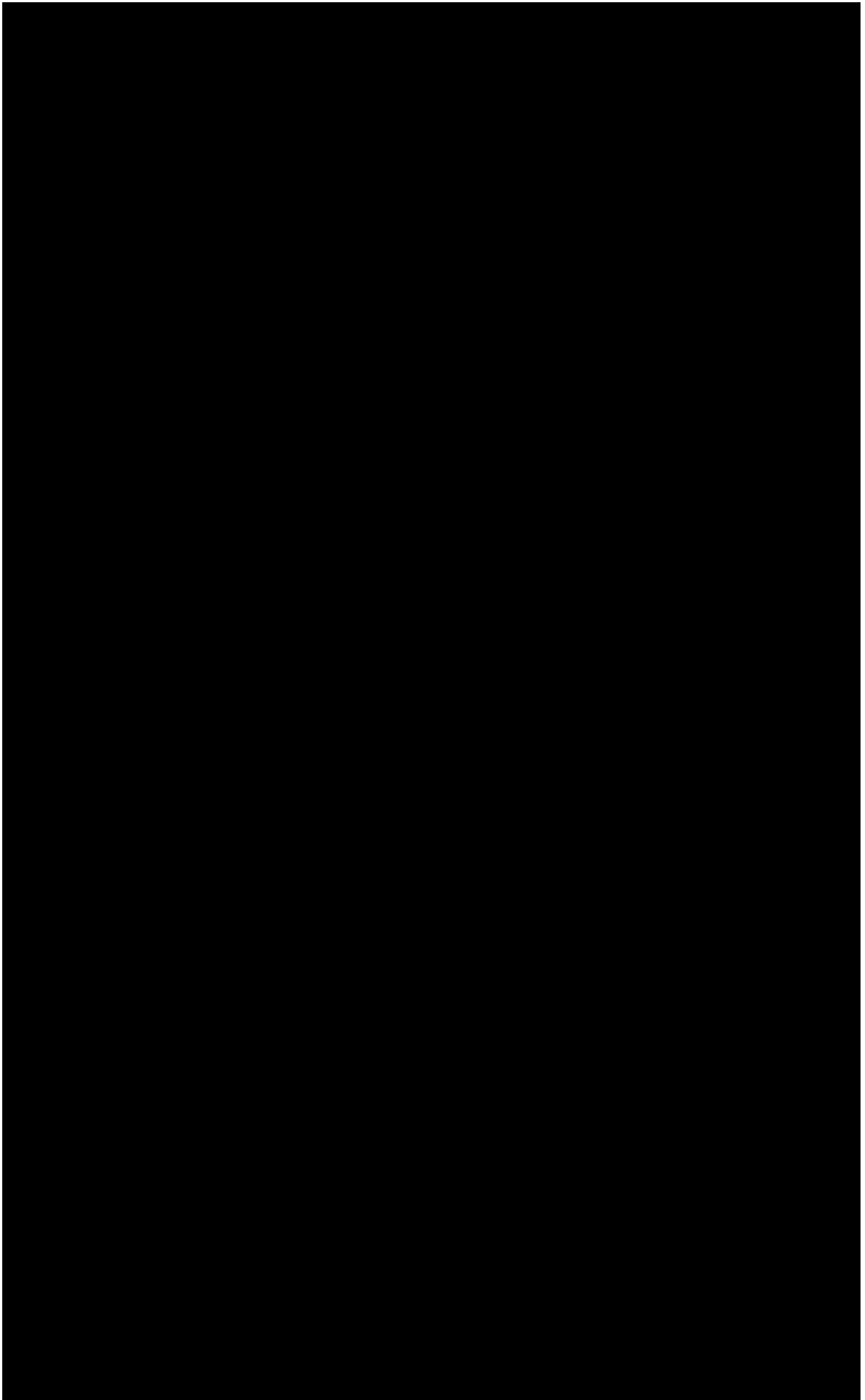
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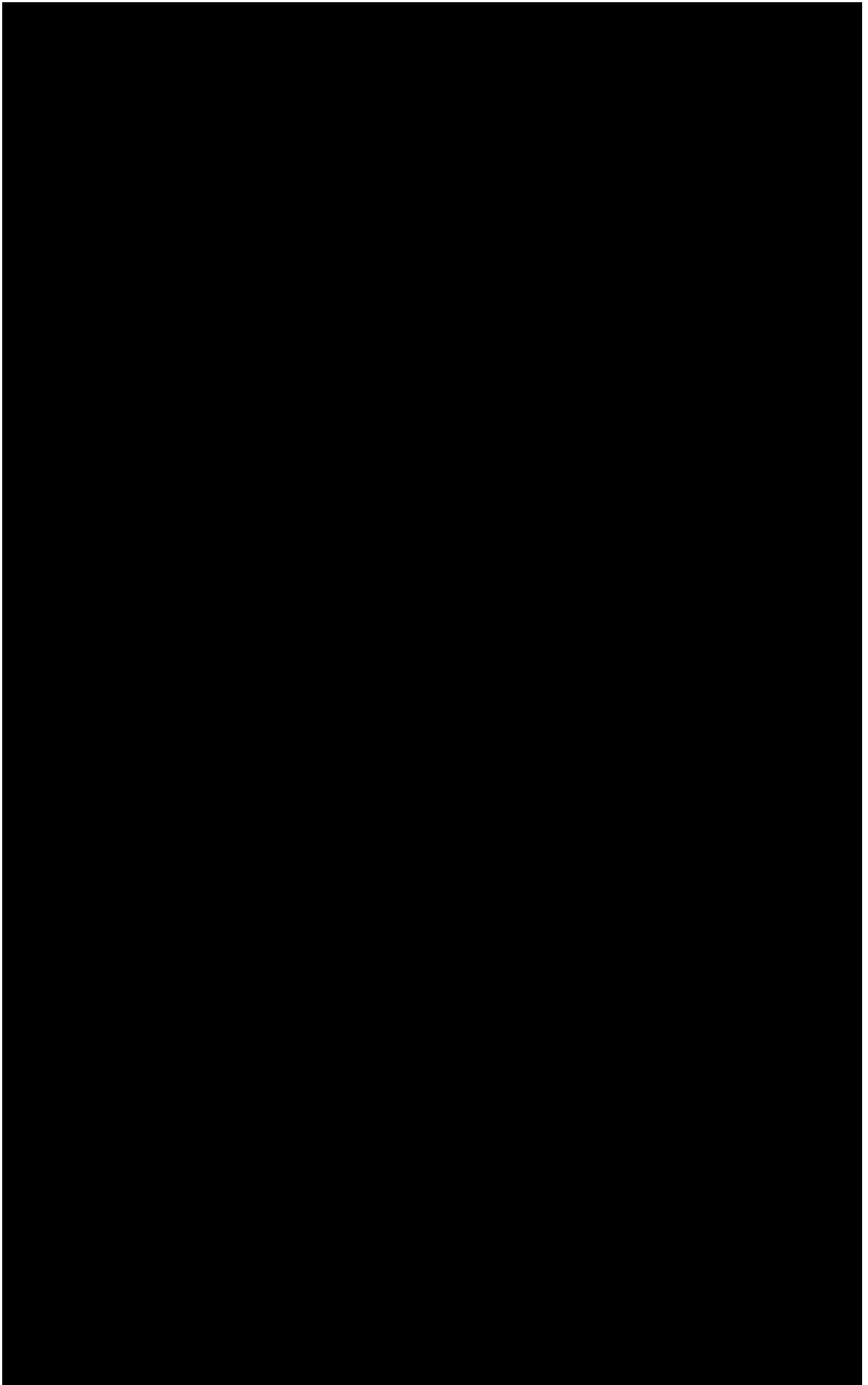
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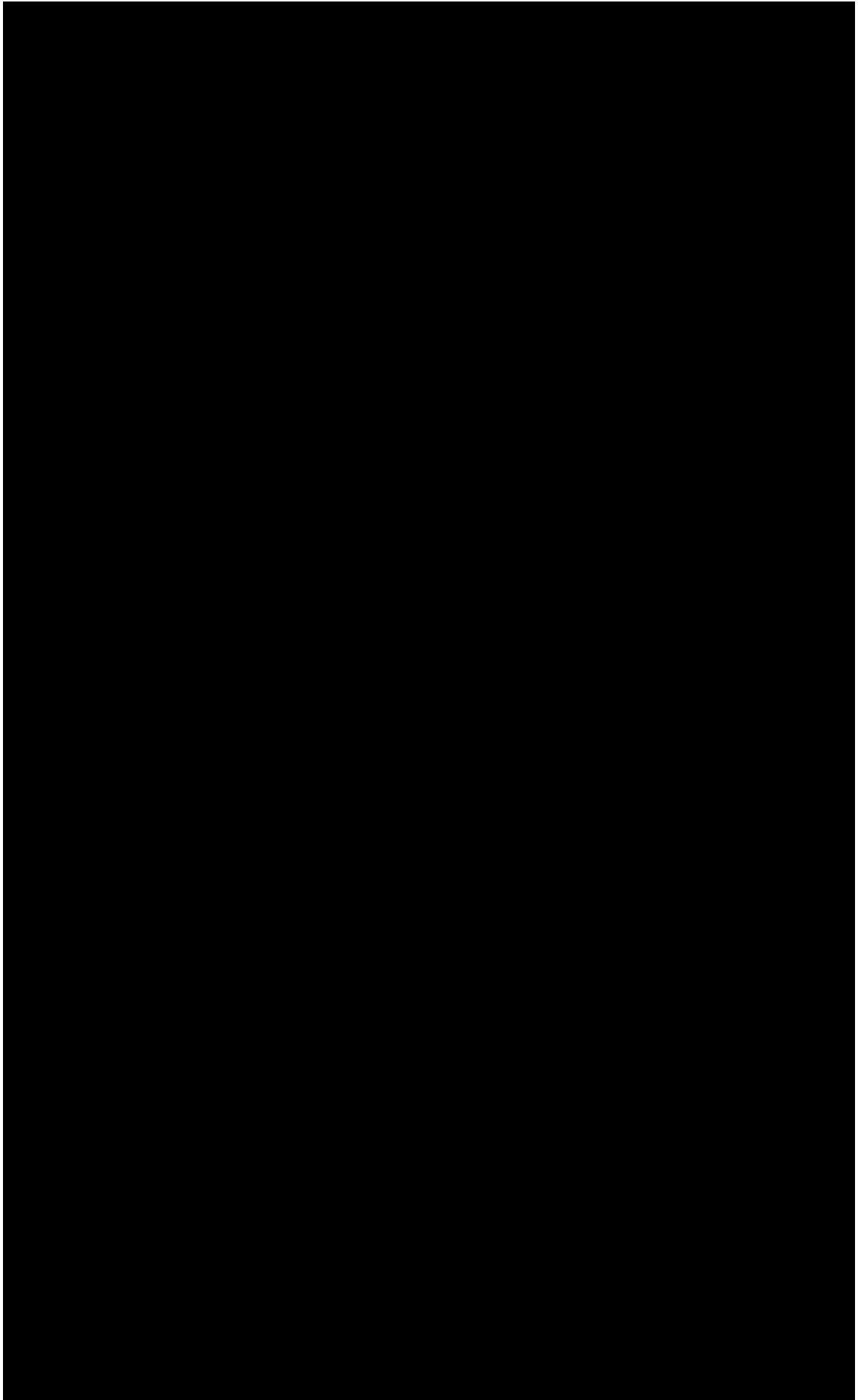
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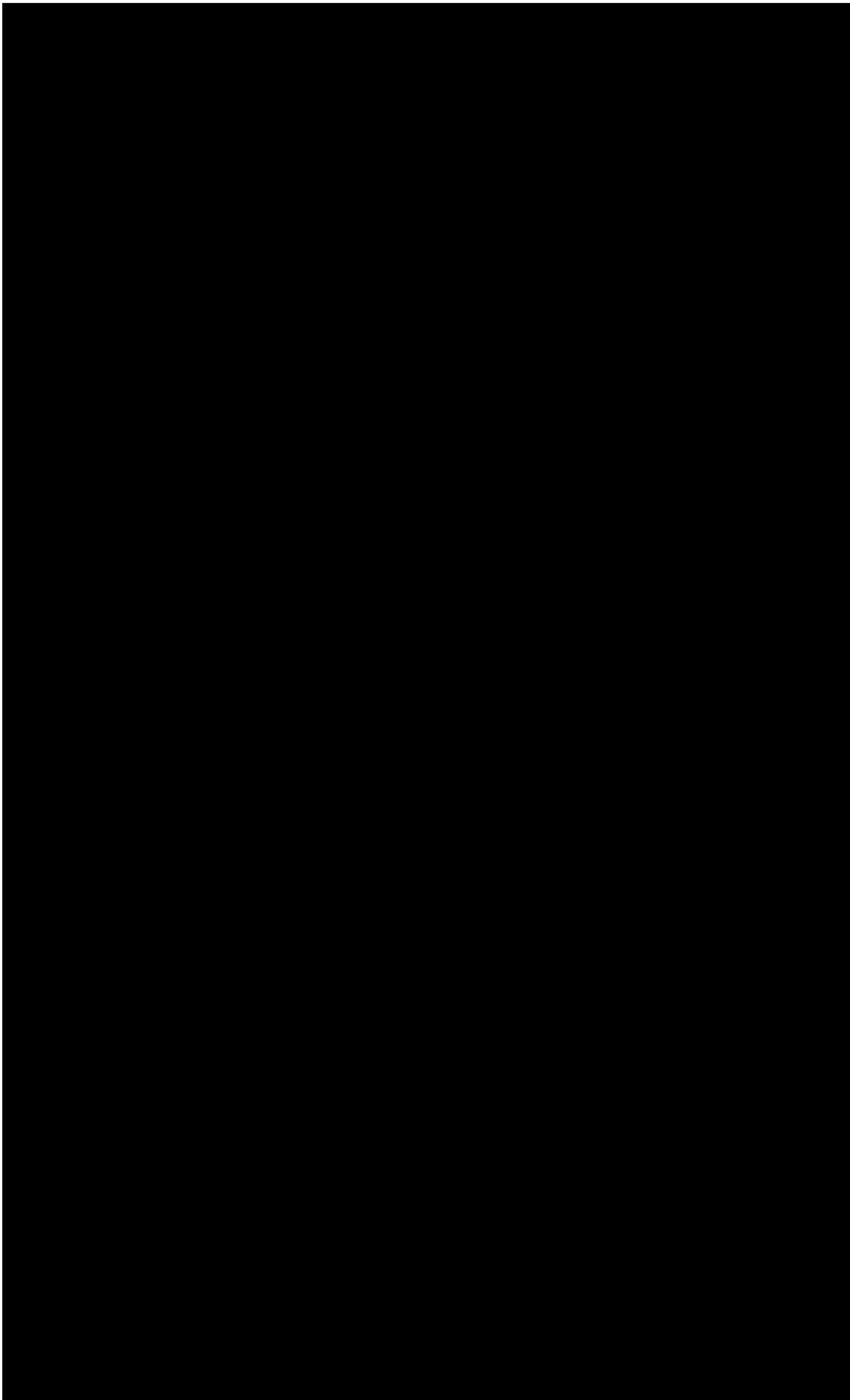
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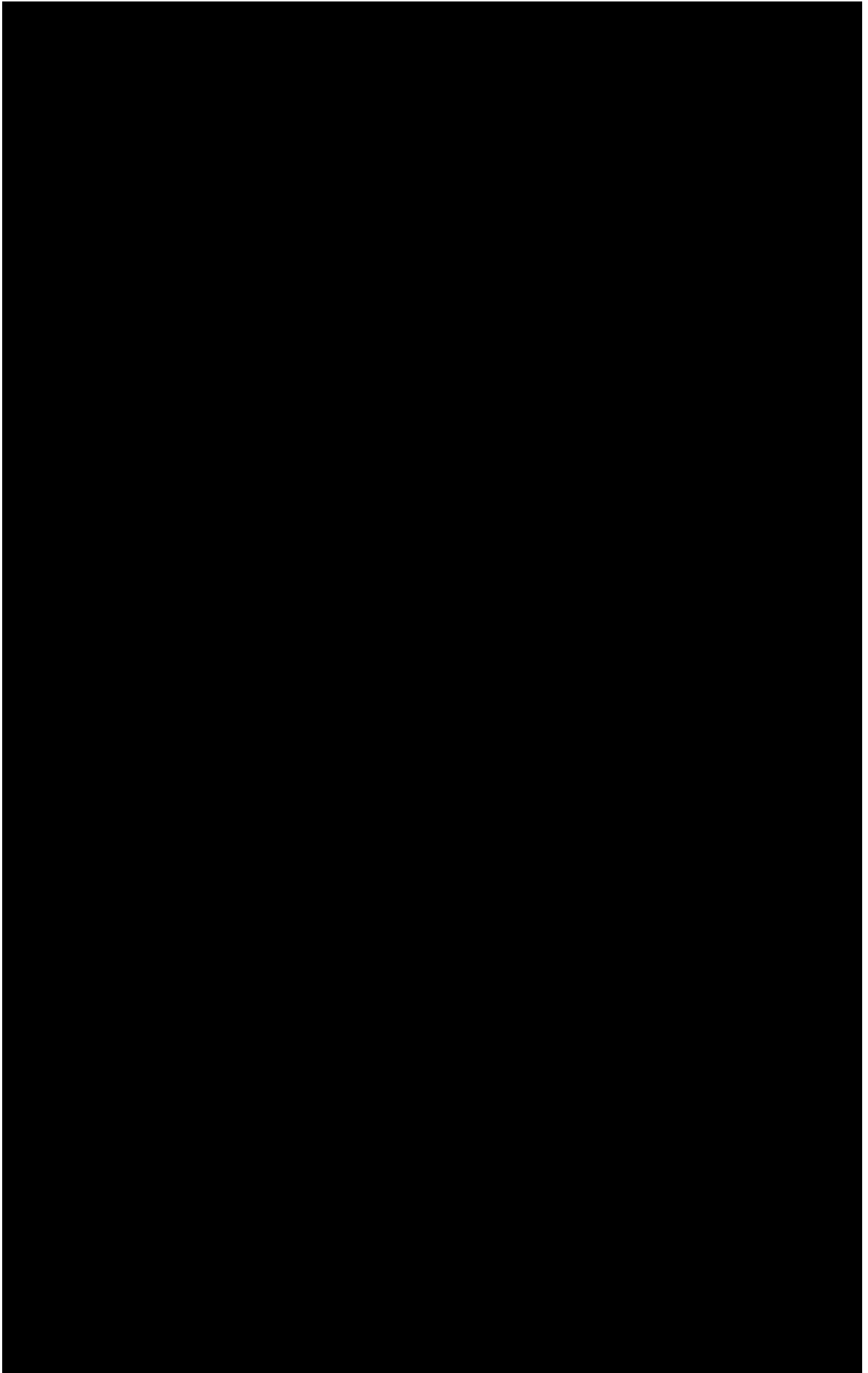
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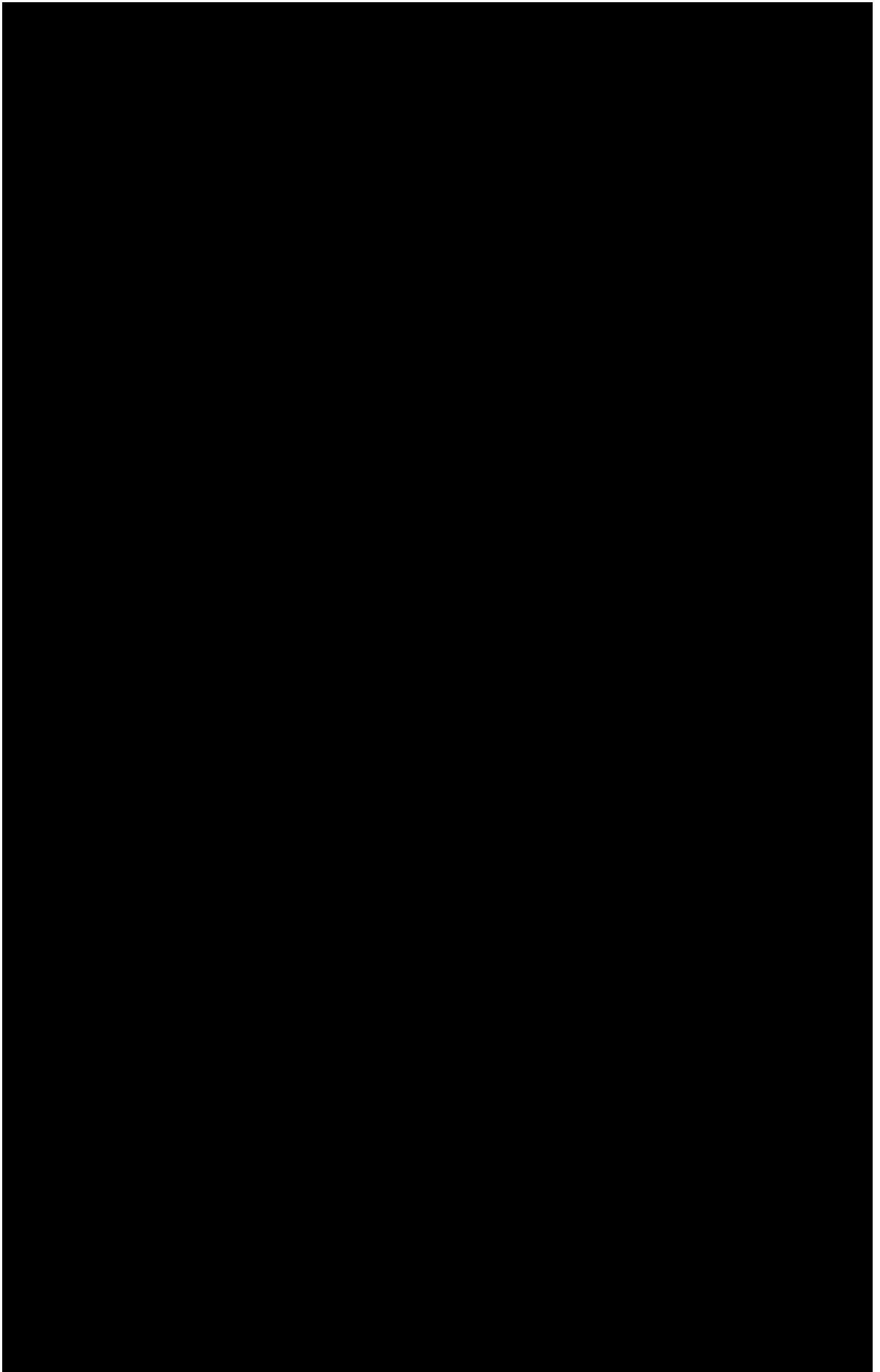
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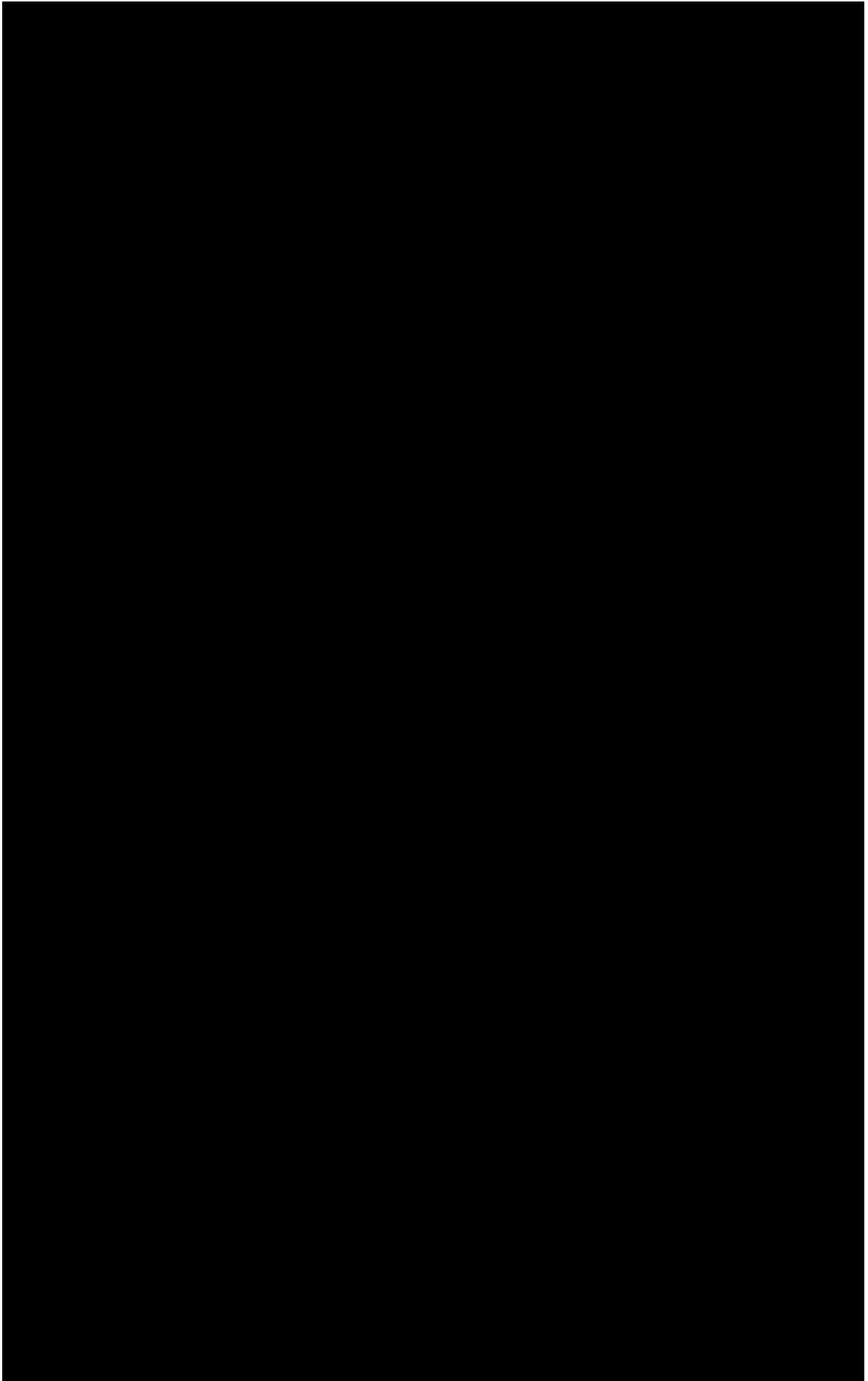
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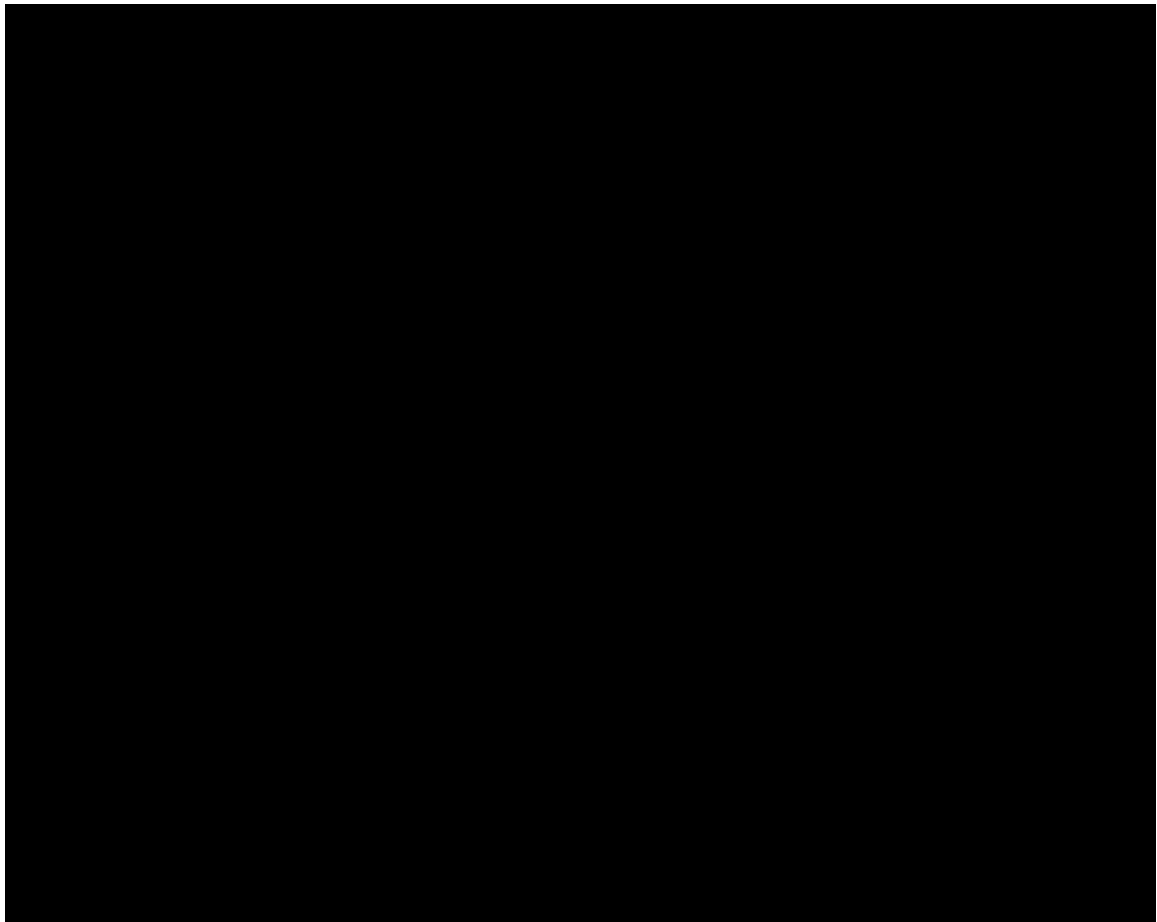
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13           Q.     And, in fact, Kelly Baker did leave, is  
14     that right?

15           A.     He did leave.

16           Q.     And Shauna left, is that right?

17           A.     No.   Shauna stayed.

18           Q.     She stayed.   Okay.

19           A.     She is still with me.

20           Q.     Why did Aaron Burtner leave in June of  
21     2013?

22           A.     I don't know the reason, but he left for  
23     a position with Amazon out in Seattle.   I believe  
24     Frank Devlin had some input in that because Frank

1 Devlin had left for Amazon and he called Aaron to  
2 come out and work with him.

3 Q. And when did Frank Devlin leave?

4 A. I don't know. I don't know the dates  
5 around that. It was --

6 Q. Do you have a rough estimate?

7 A. Before Aaron, but really I don't know.

8 Q. Do you know, was it shortly before Aaron  
9 in 2013 or was it earlier than that?

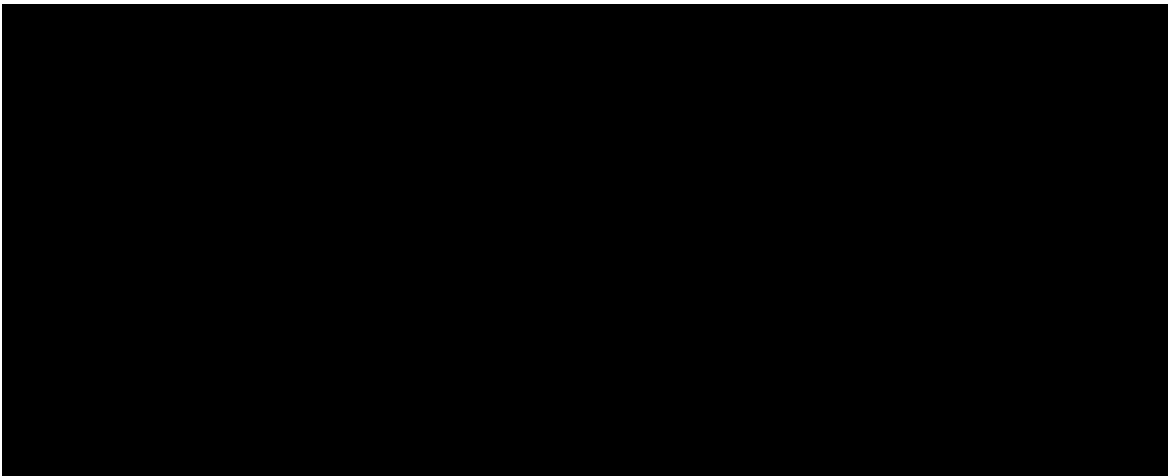
10 A. I don't know. I'm not sure.

11 Q. Next document I'm going to show you is  
12 CVS 22055 through 61, and it's Exhibit 28.

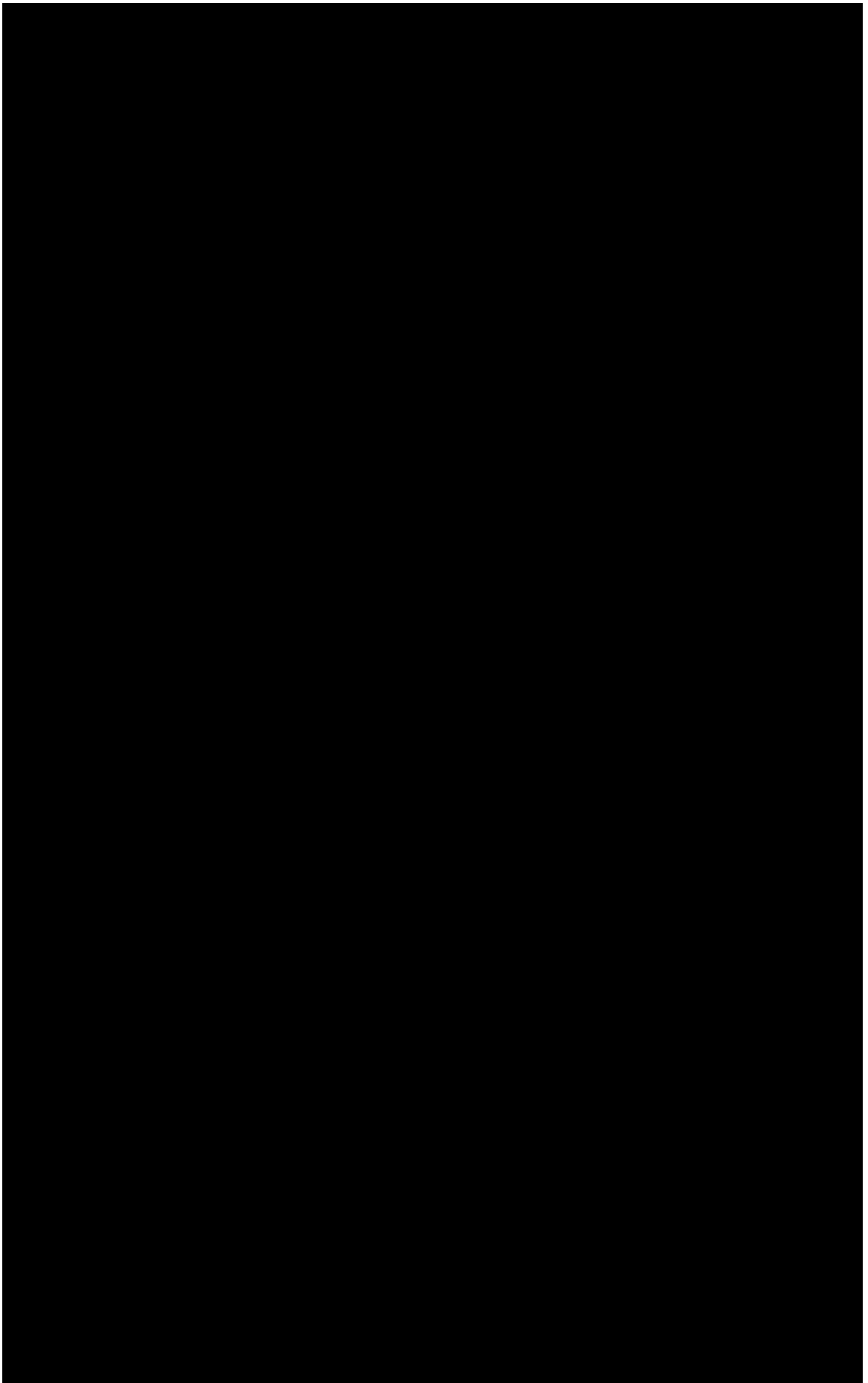
13 (WHEREUPON, a certain document was  
14 marked as CVS-Nicastro-028:  
15 10/3/13 e-mail string with  
16 attachments; CVS-MDLT1-000022055 -  
17 000022061.)

18 BY MR. ELSNER:

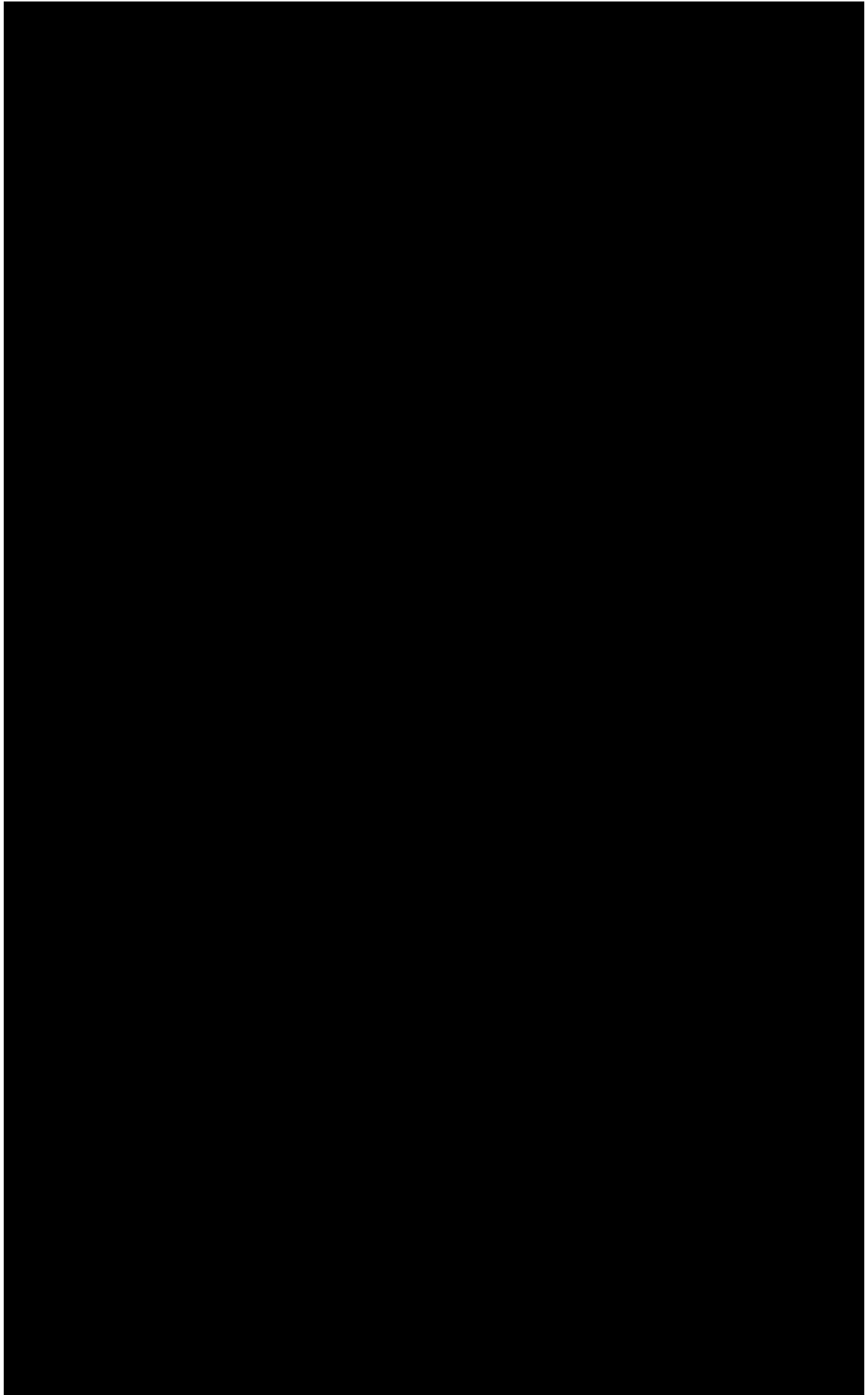
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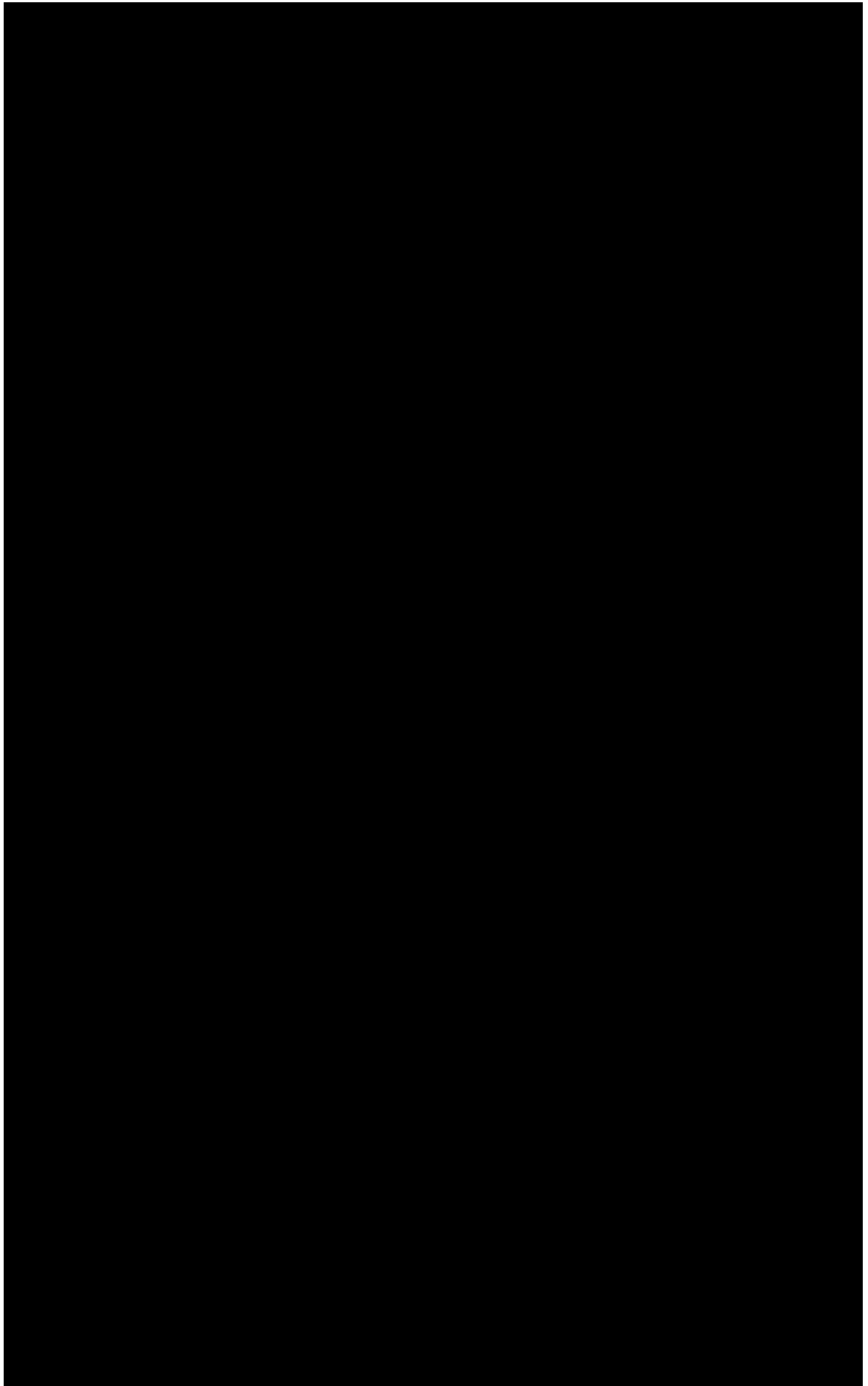
18           Q.     Okay. And Pamela Hinkle responds. Who  
19     is Pamela Hinkle?

20           A.     She -- her -- she is -- she was LP  
21     manager in Knoxville, but she -- I'm not exactly  
22     sure what her title is today. But she was involved  
23     with the SOM process.

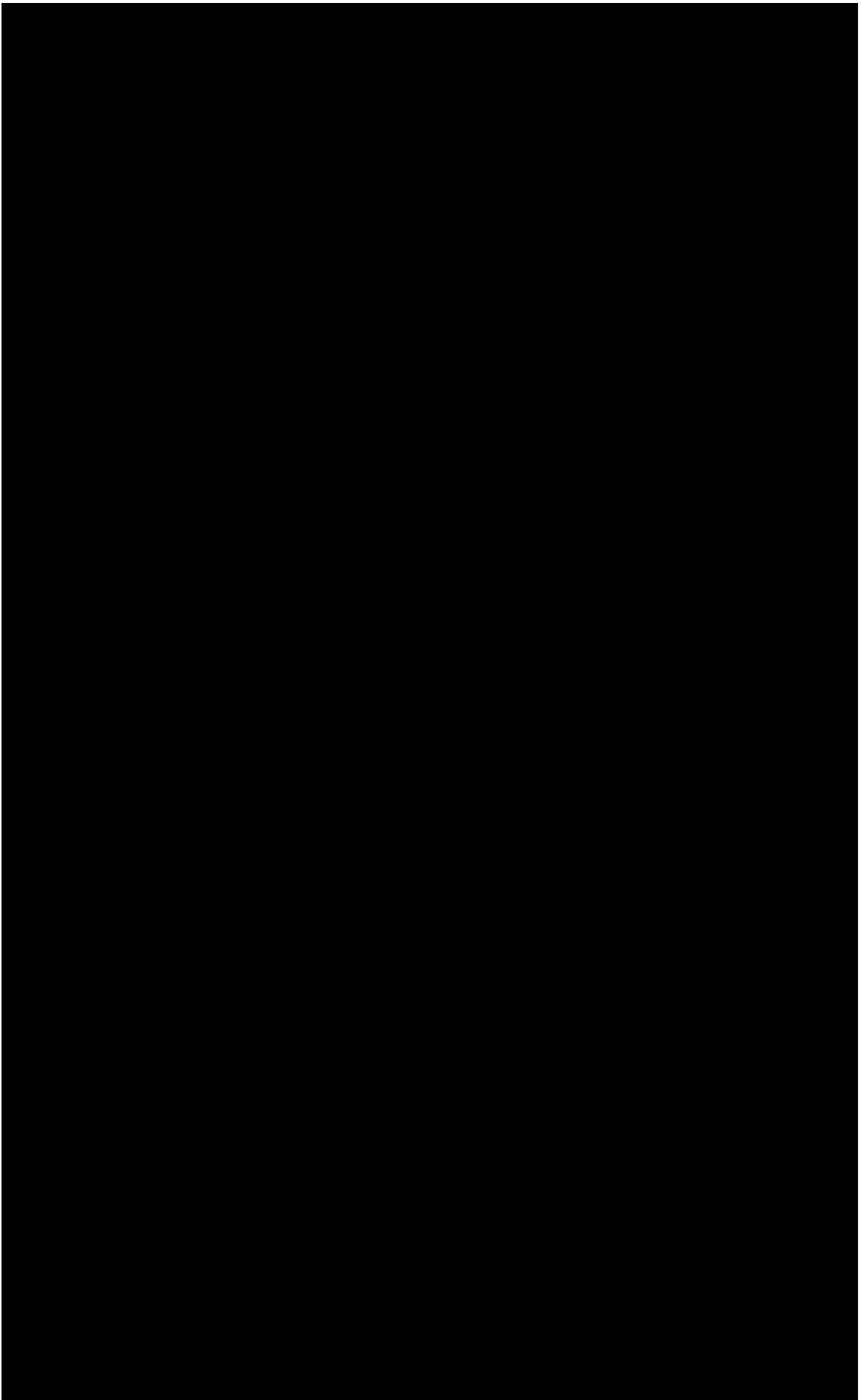
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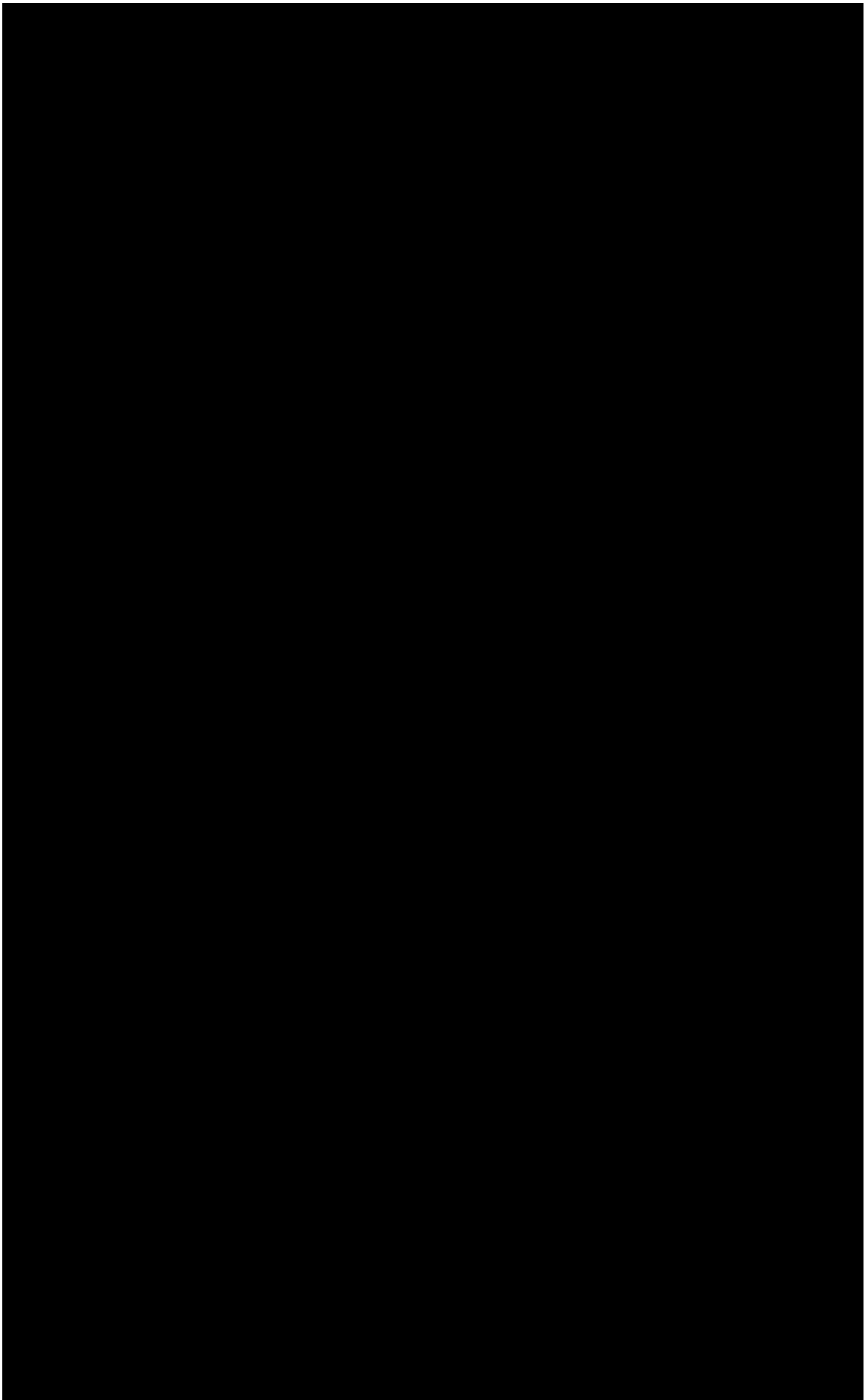
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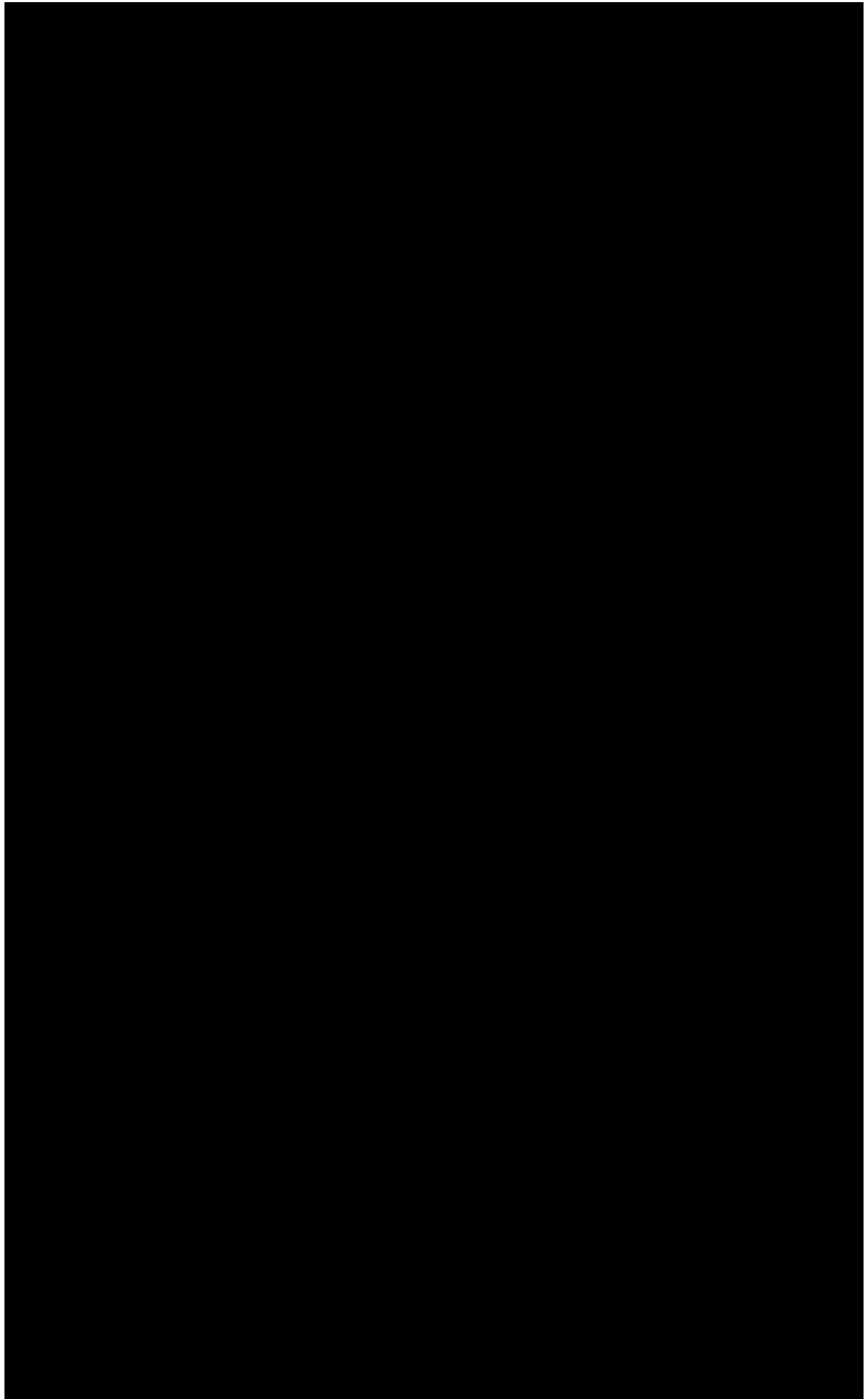
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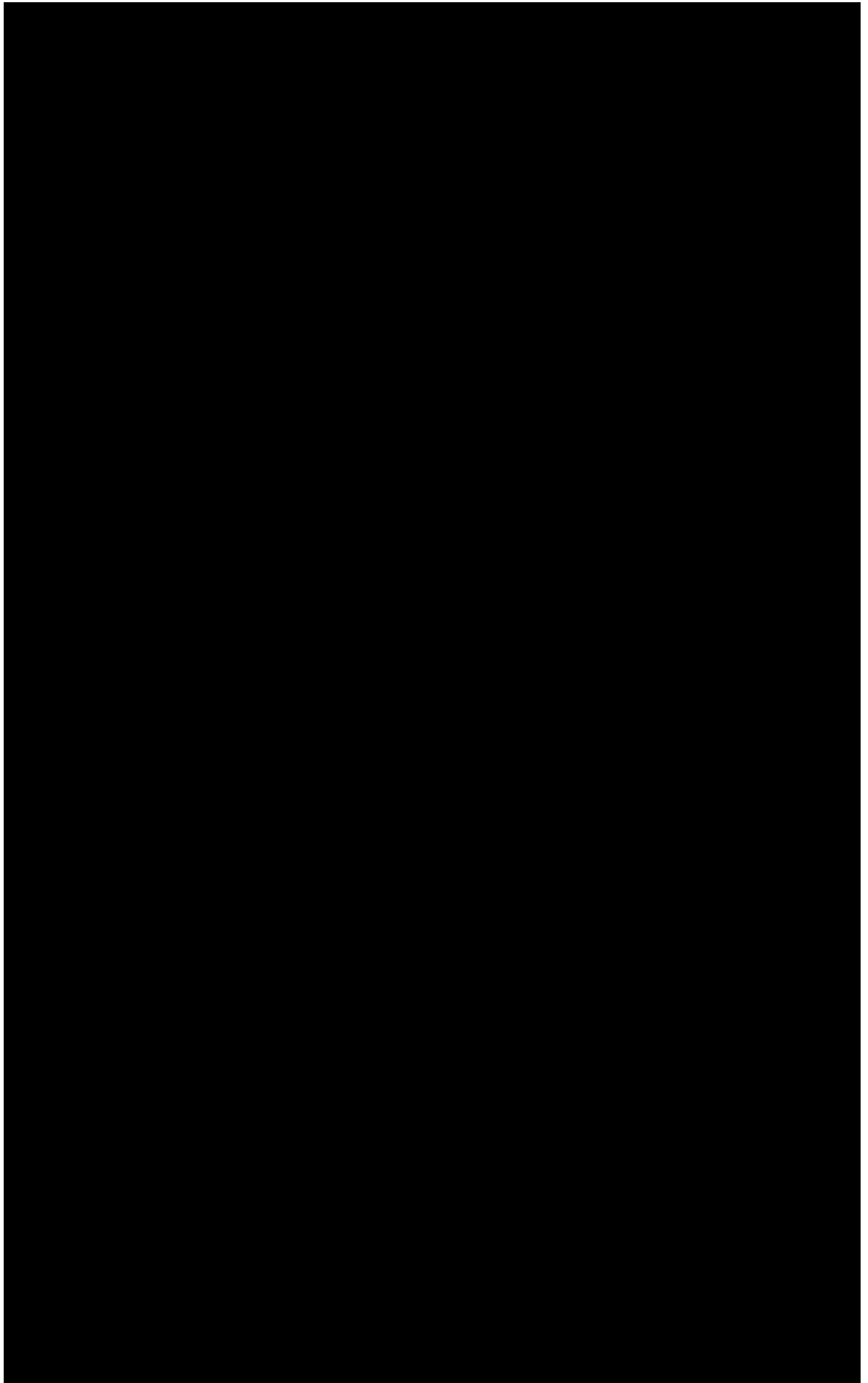
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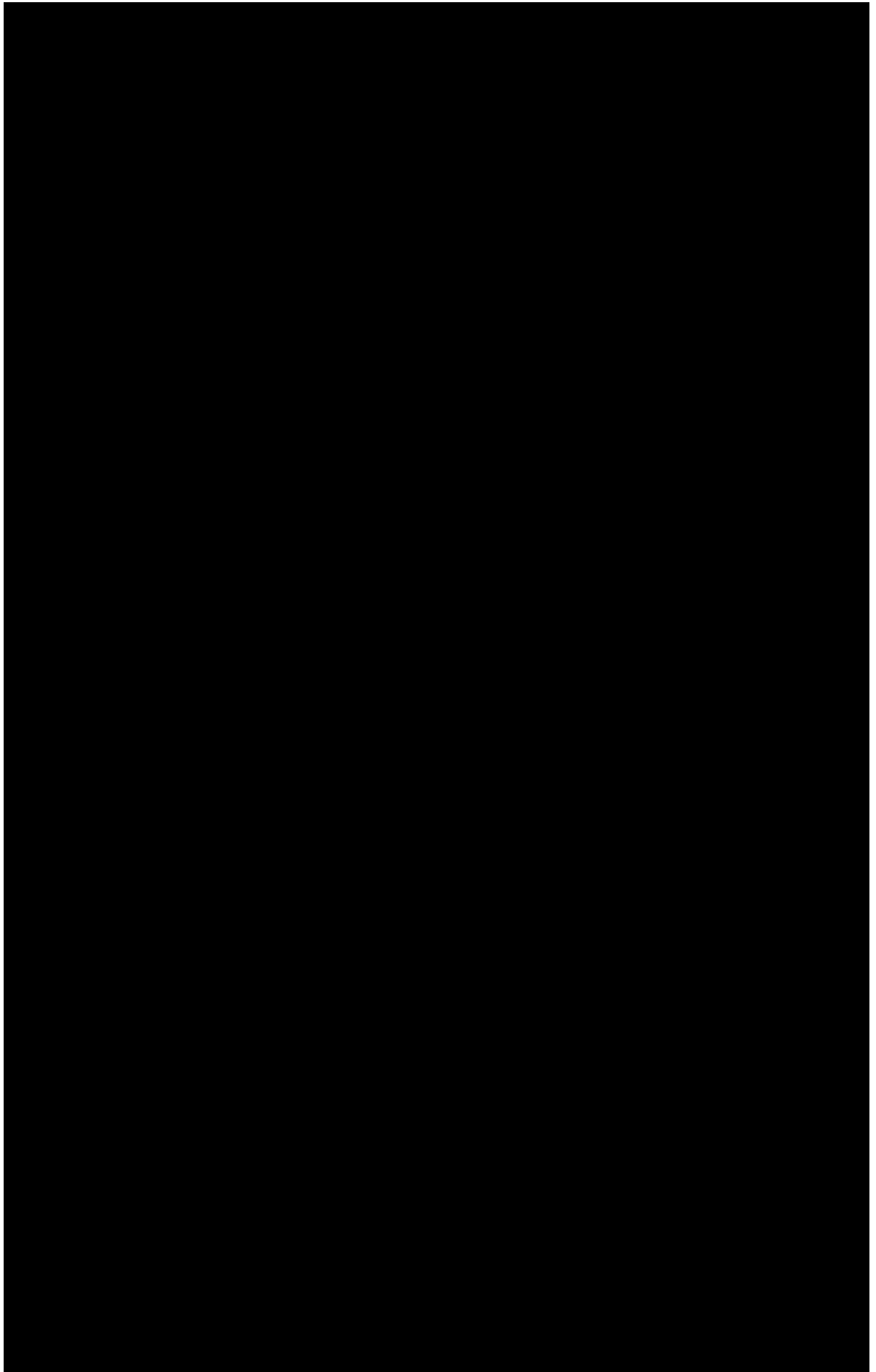
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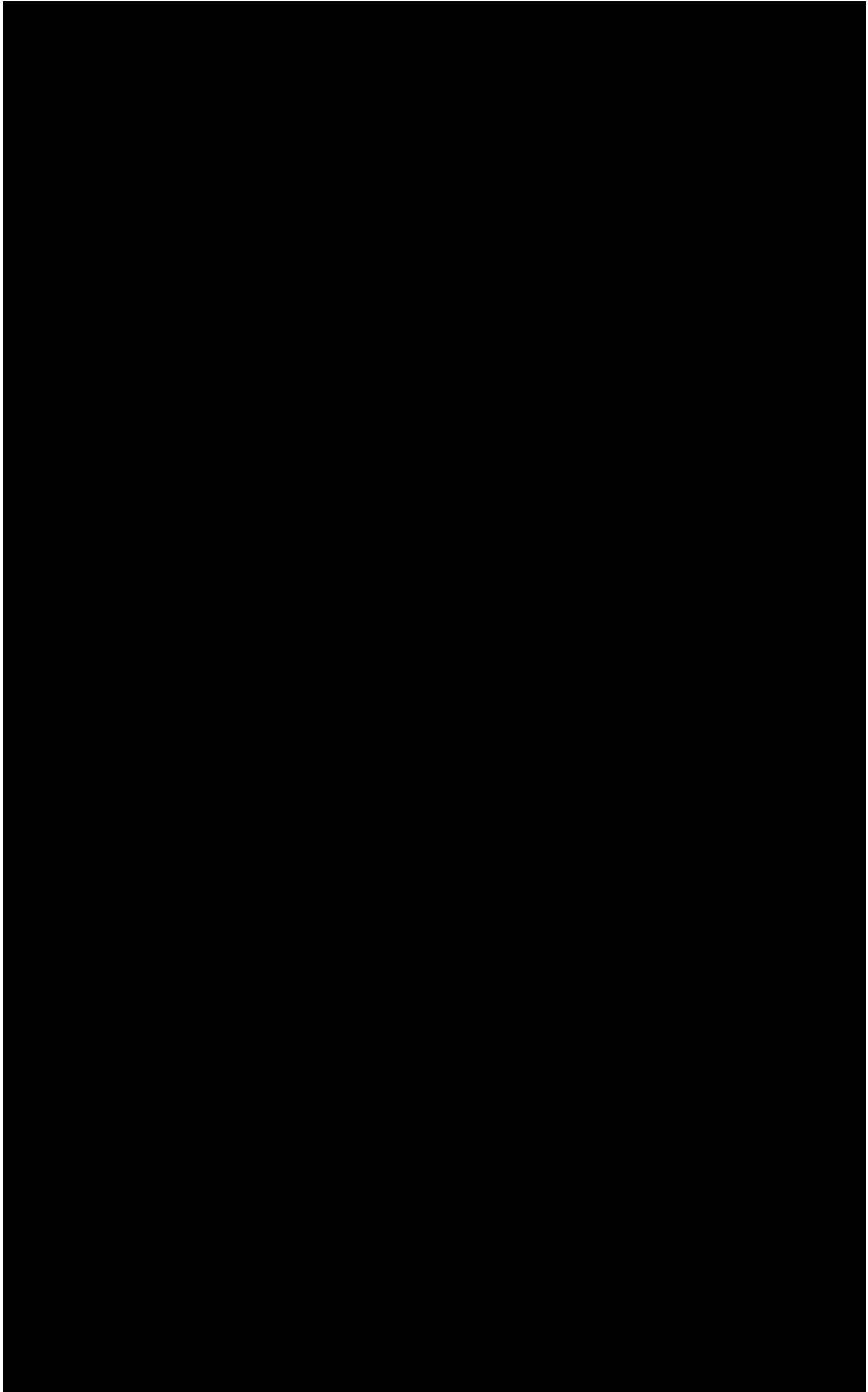
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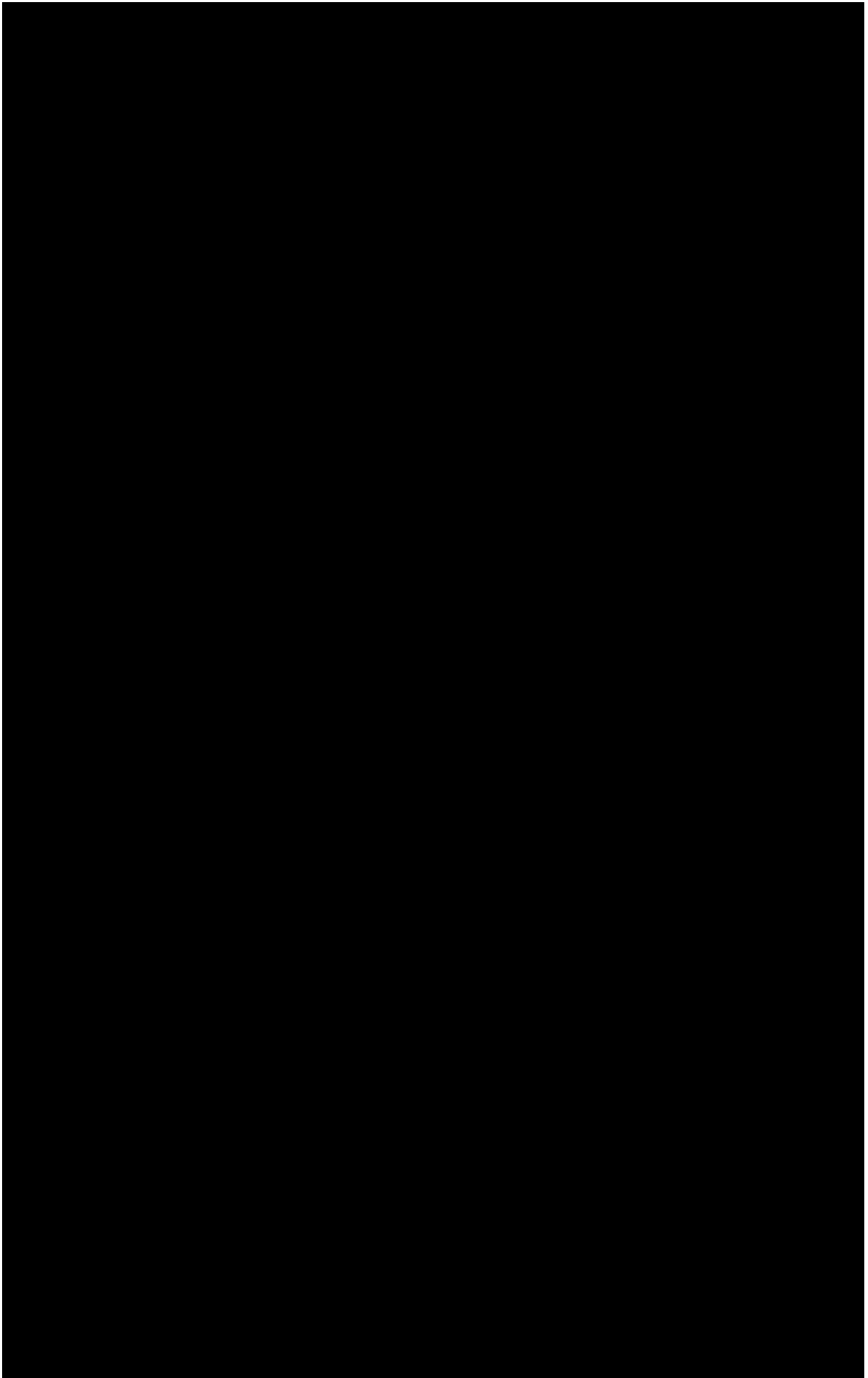
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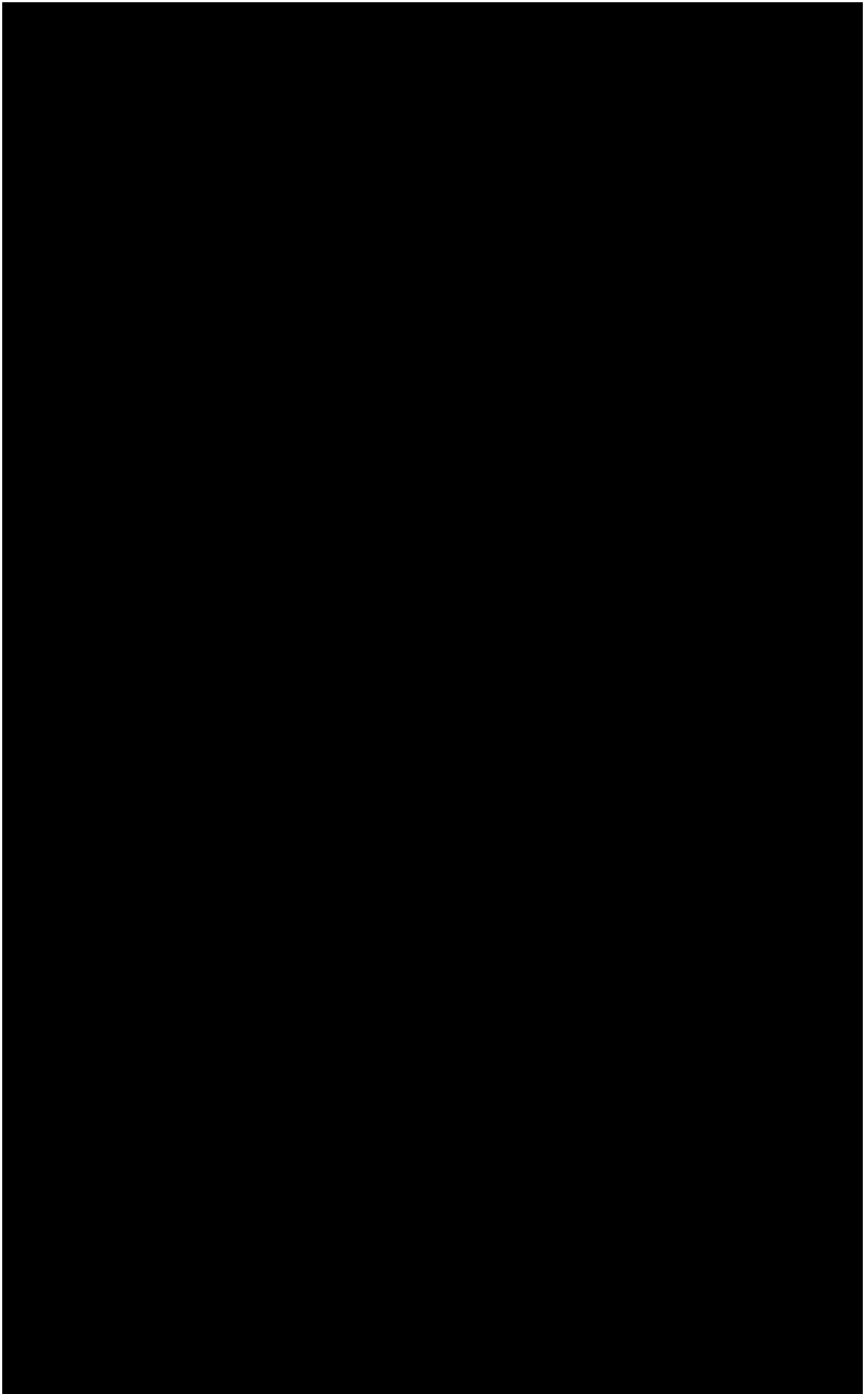
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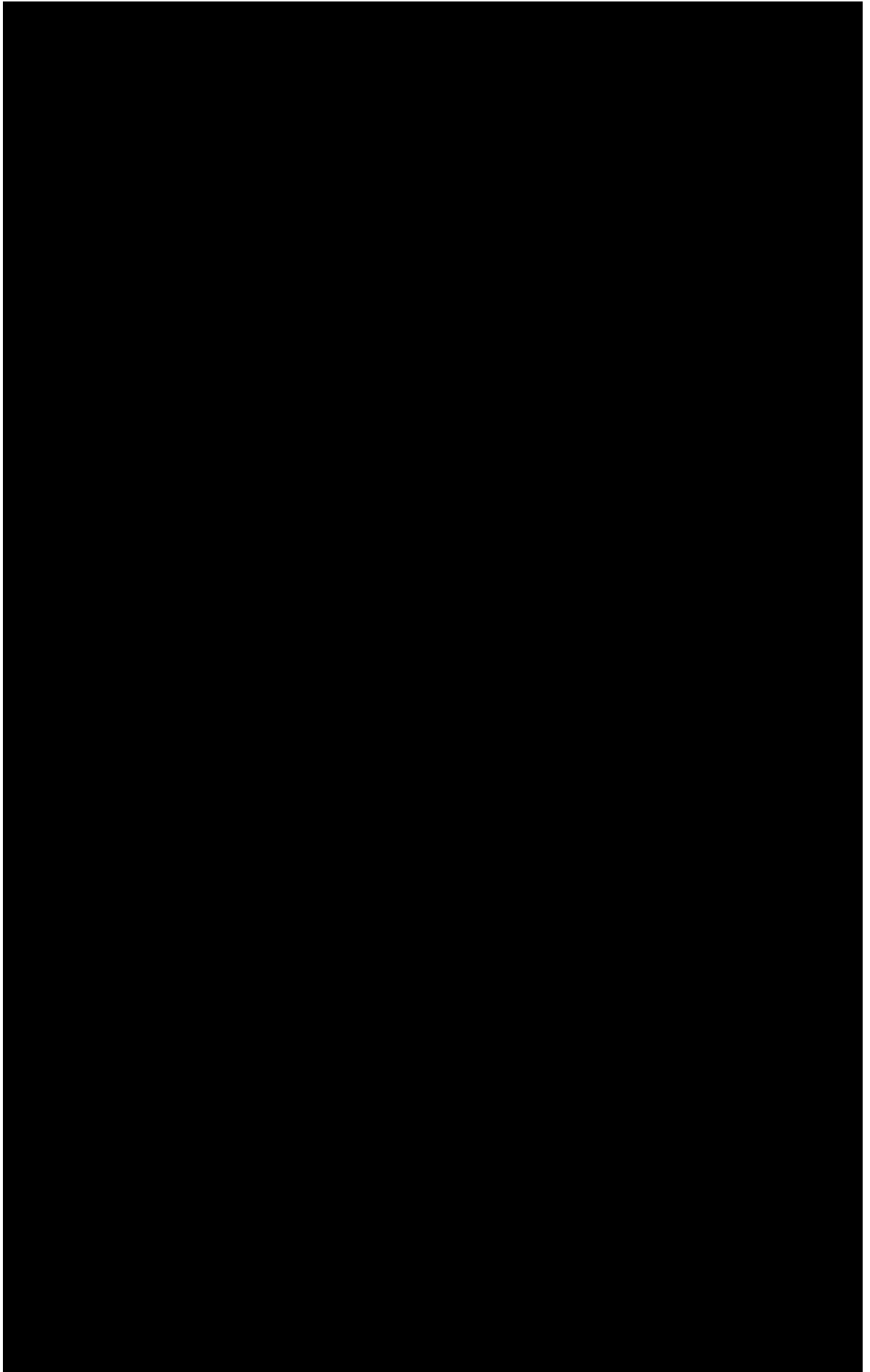
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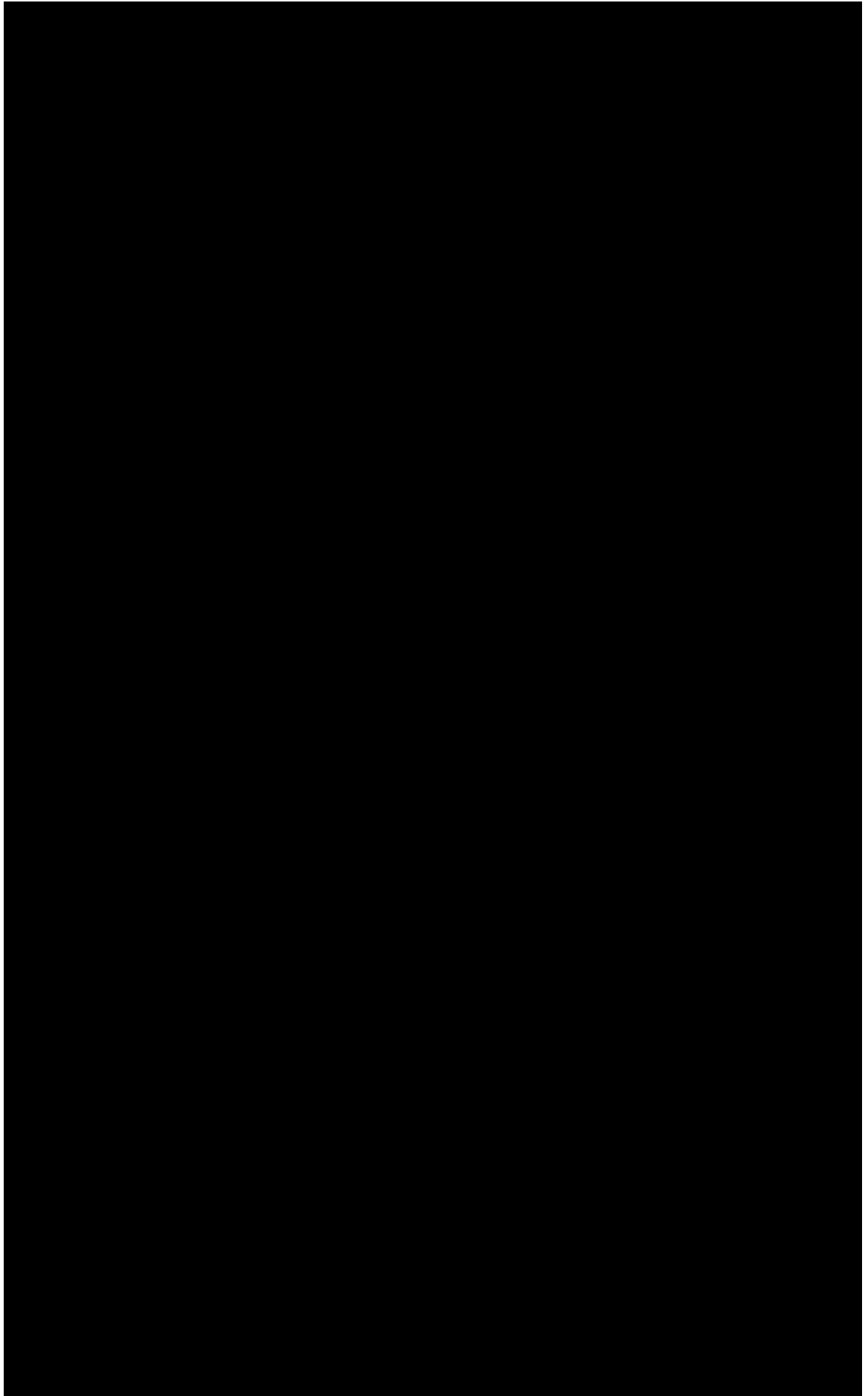
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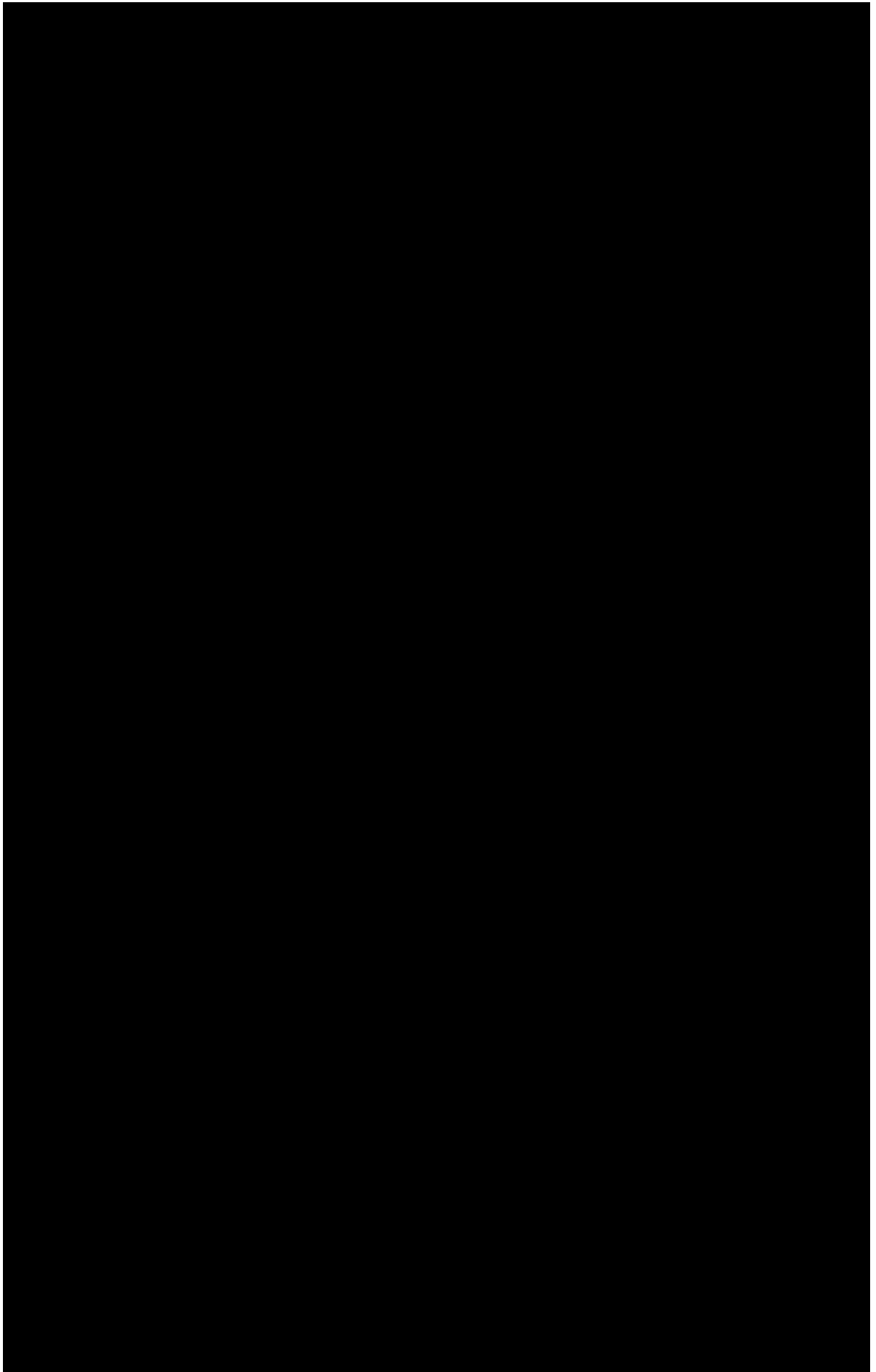
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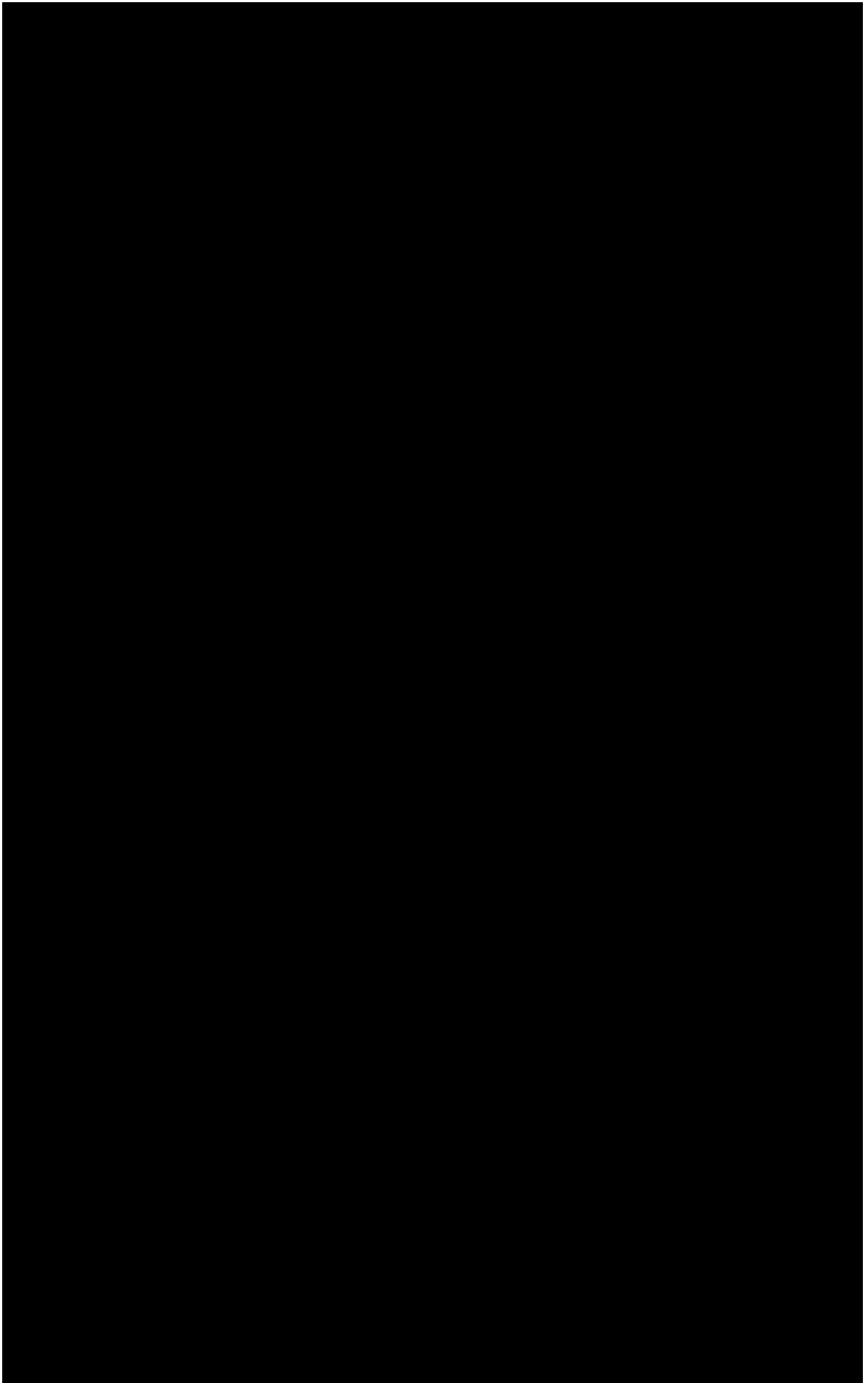
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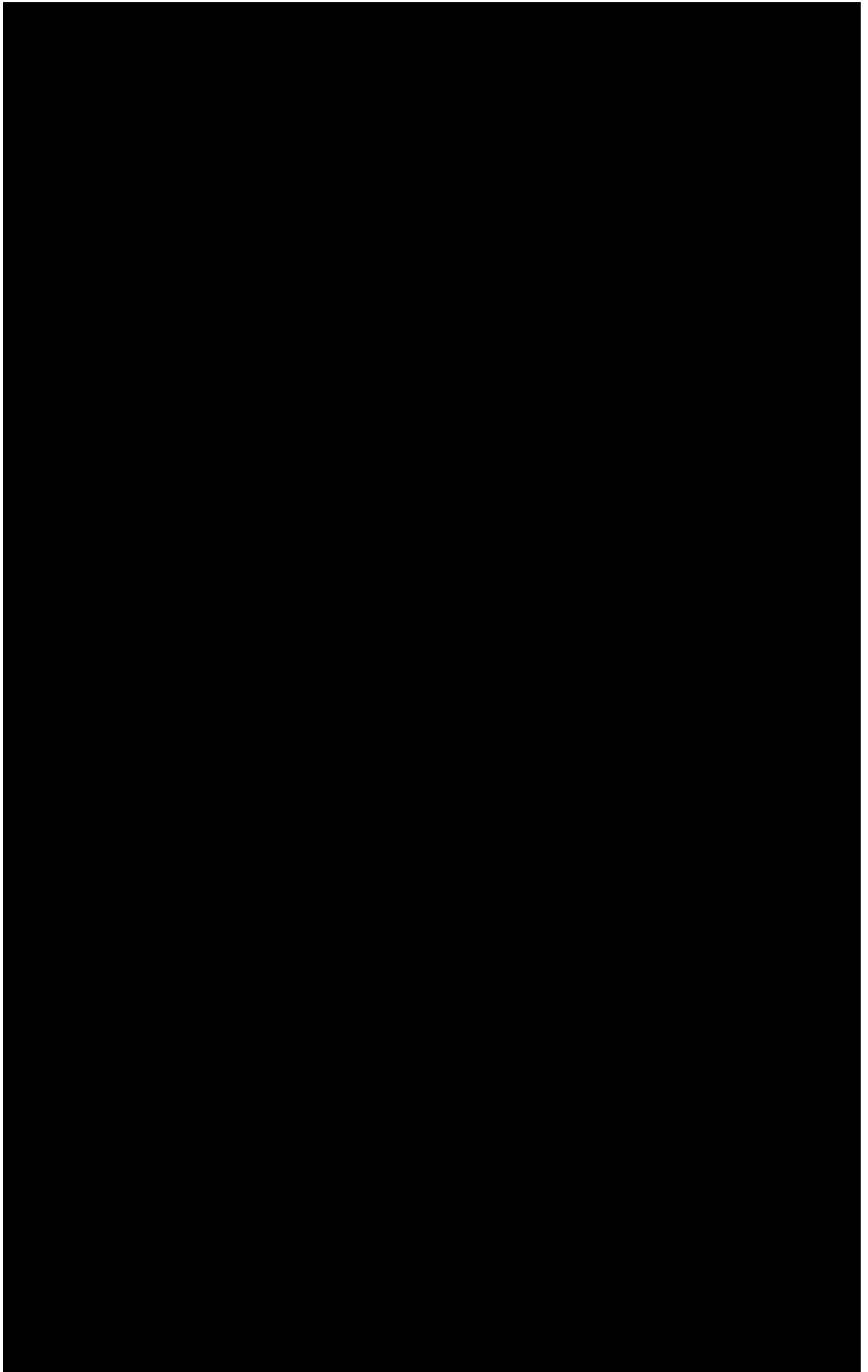
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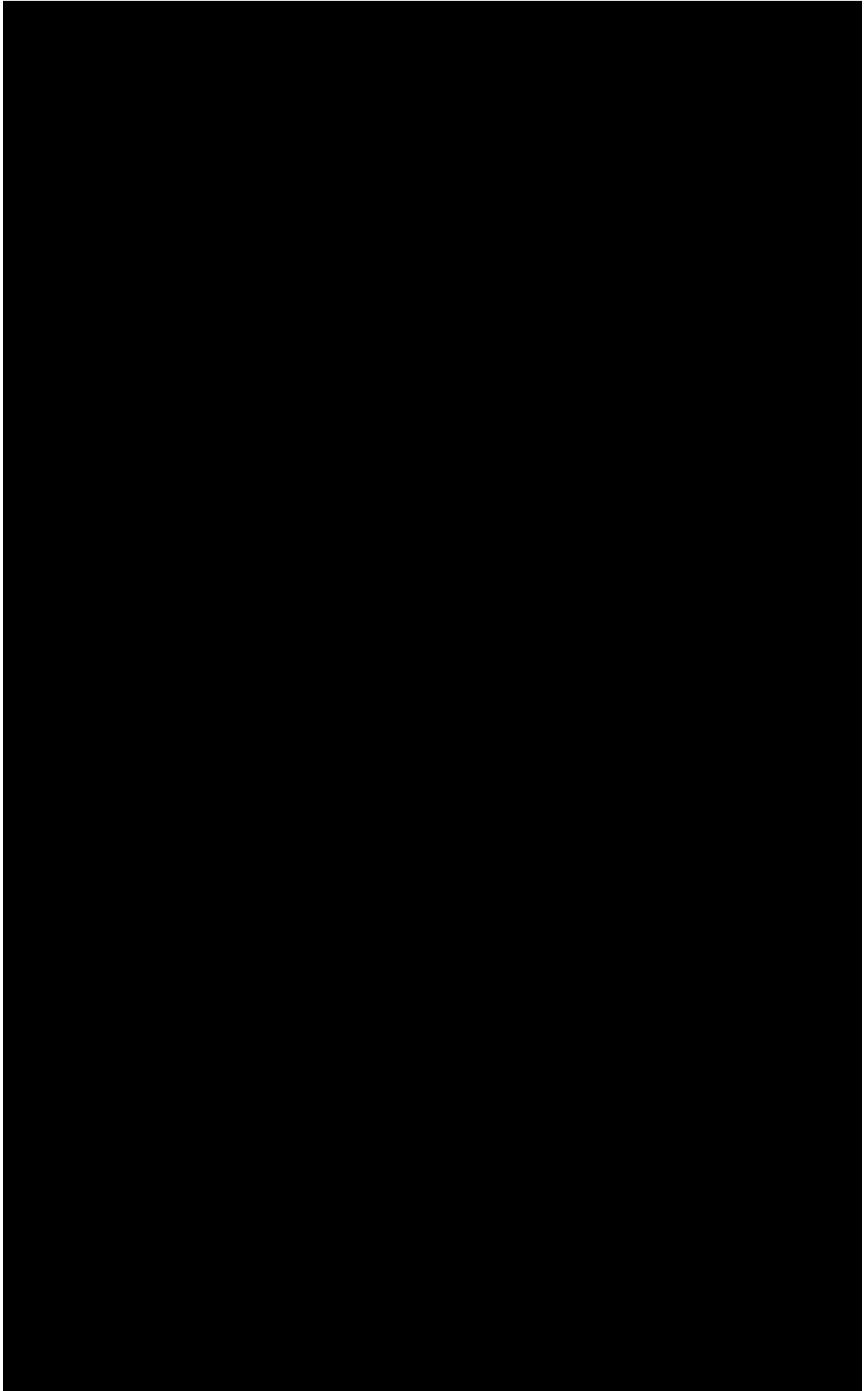
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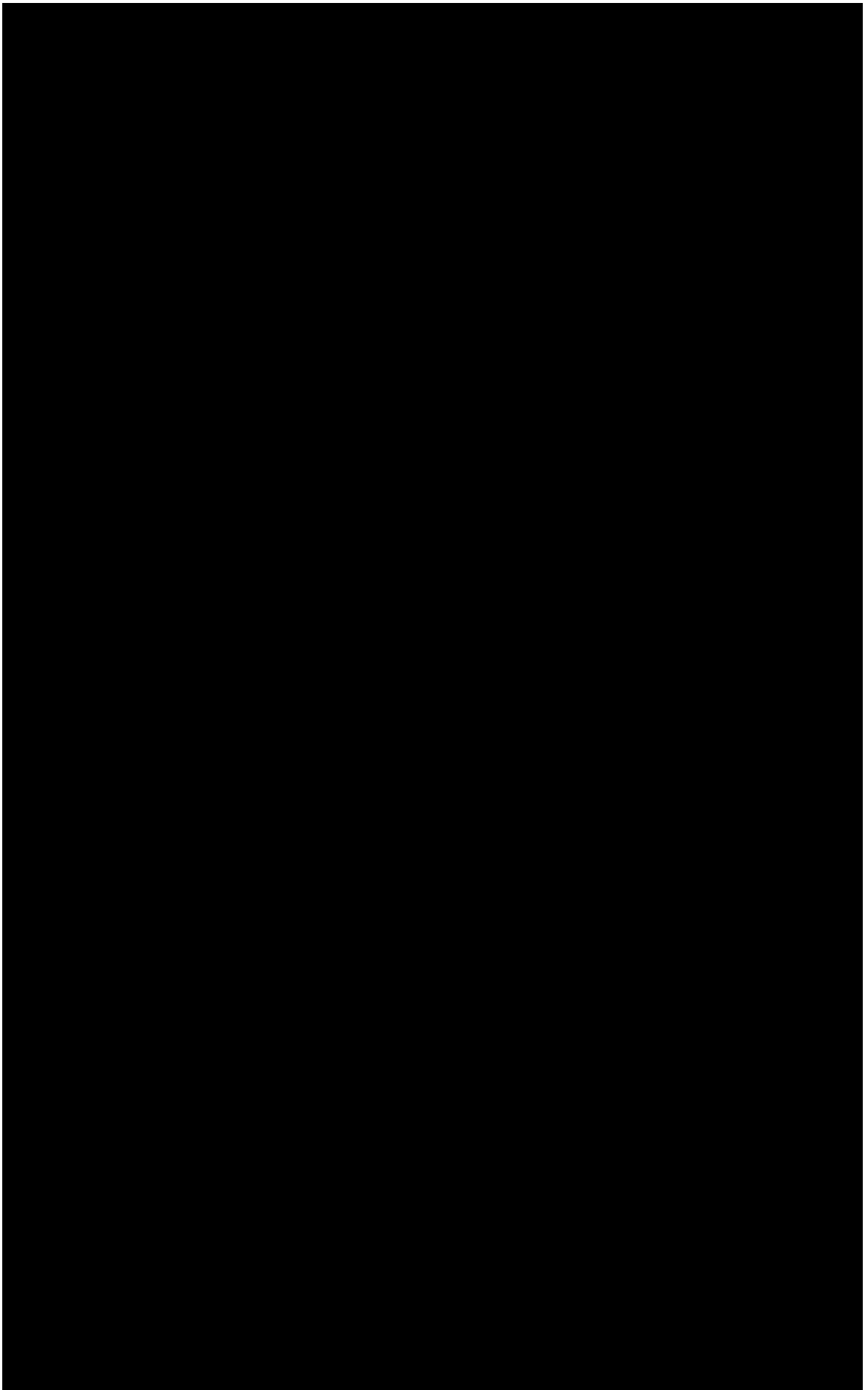
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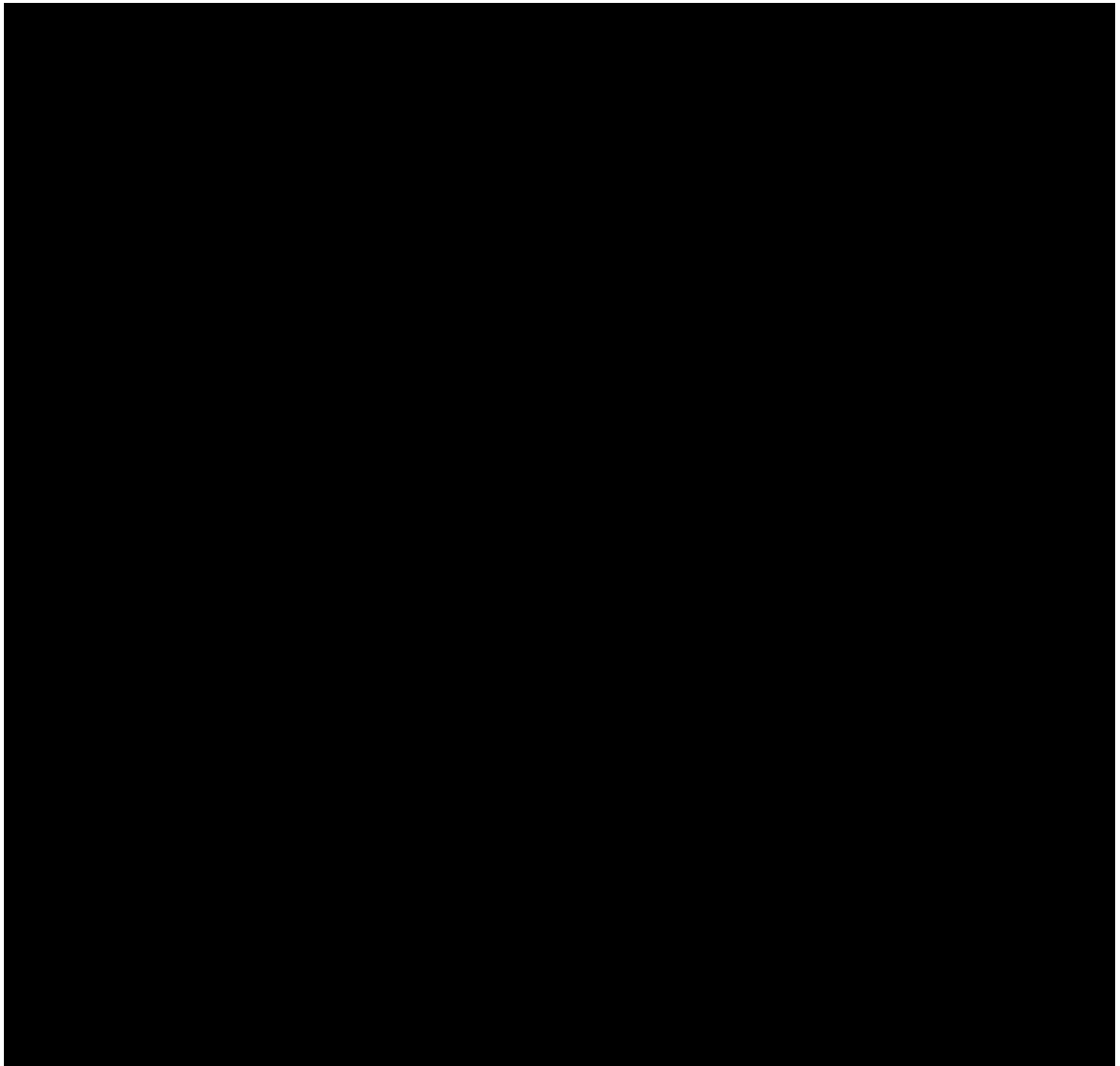
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15 Q. Is it customary for the DEA agents to  
16 give you copies of their business cards when they  
17 begin their audits?

18 A. Yes.

19 Q. Who is Daniel Gillen?

20 A. He was the group supervisor. Andrew and  
21 Michael reported to Dan, the way I understood the  
22 relationship.

23 MR. ELSNER: This next document is Exhibit 34.

24 (WHEREUPON, a certain document was

1 marked as CVS-Nicastro-034: 8/7/13  
2 e-mail; CVS-MDLT1-000061606 -  
3 000061607.)

4 BY MR. ELSNER:

5 Q. This is an e-mail from Pamela Hinkle to  
6 Joseph Scholl. Who is Pamela Hinkle?

7 A. Pamela Hinkle is -- she works out of the  
8 Knoxville DC. She is in the LP world, loss  
9 prevention world. But she is heavily involved with  
10 DEA compliance.

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15 BY MR. ELSNER:

16 Q. Oh, sorry. I'm sorry. He describes.  
17 Who is Joseph Scholl?

18 A. Joseph Scholl would have been my loss  
19 prevention manager at this time.

20 Q. Okay. And he was based in Indianapolis,  
21 is that right?

22 A. Yes.

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7 Q. I'm going to show you Exhibit 33.

8 MR. HYNES: 35. This was 34.

9 THE WITNESS: 33 was the handwritten.

10 MR. ELSNER: Sorry. 35.

11 MR. HYNES: I would have made that mistake a

12 few times if I was taking the deposition.

13 MR. ELSNER: Just put 35. We will go from

14 there.

15 (WHEREUPON, a certain document was

16 marked as CVS-Nicastro-035:

17 Document, "DEA Visit 8/5 - 8/8

18 2013"; CVS-MDLT1-000008389 -

19 000008395.)

20 BY MR. ELSNER:

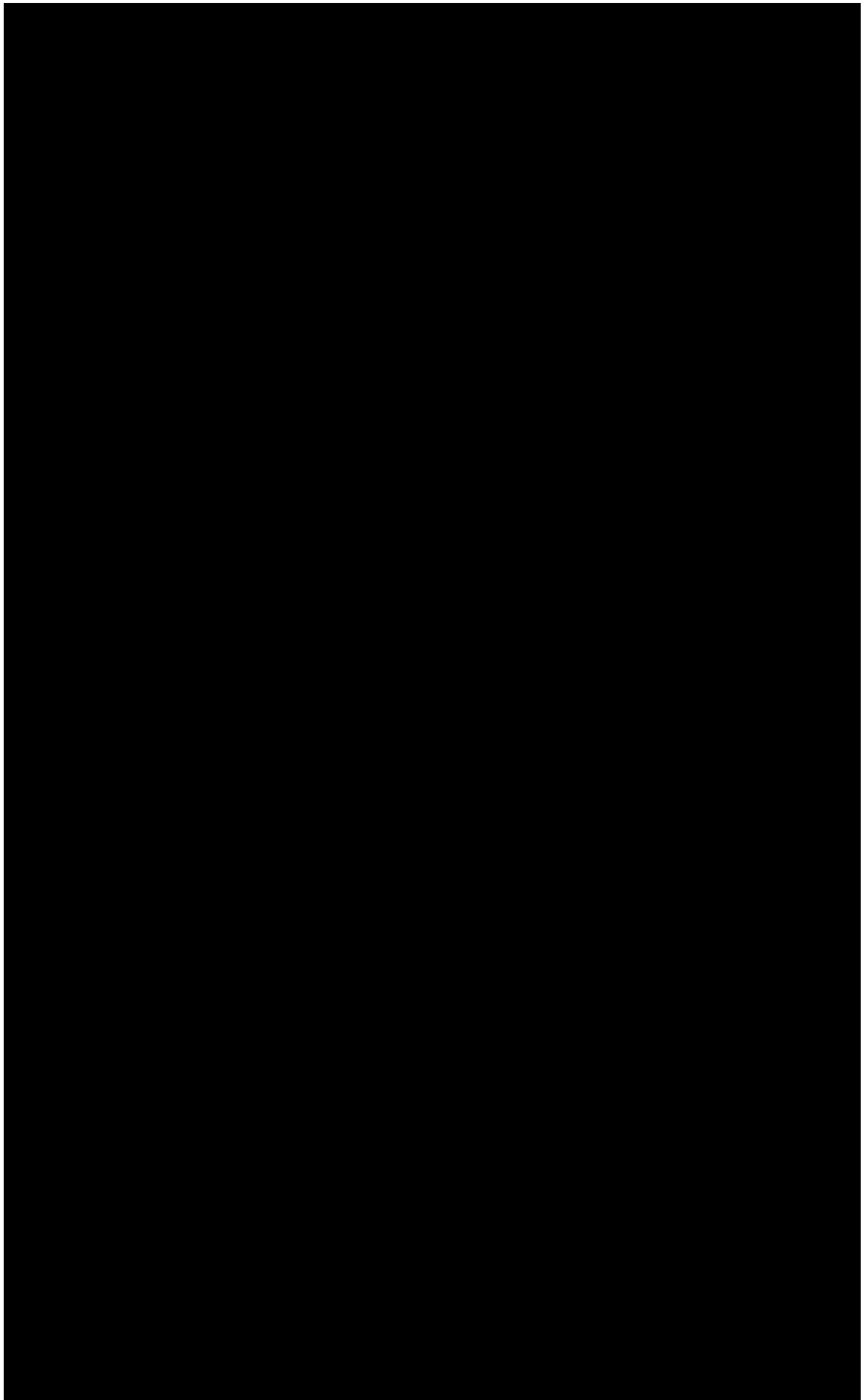
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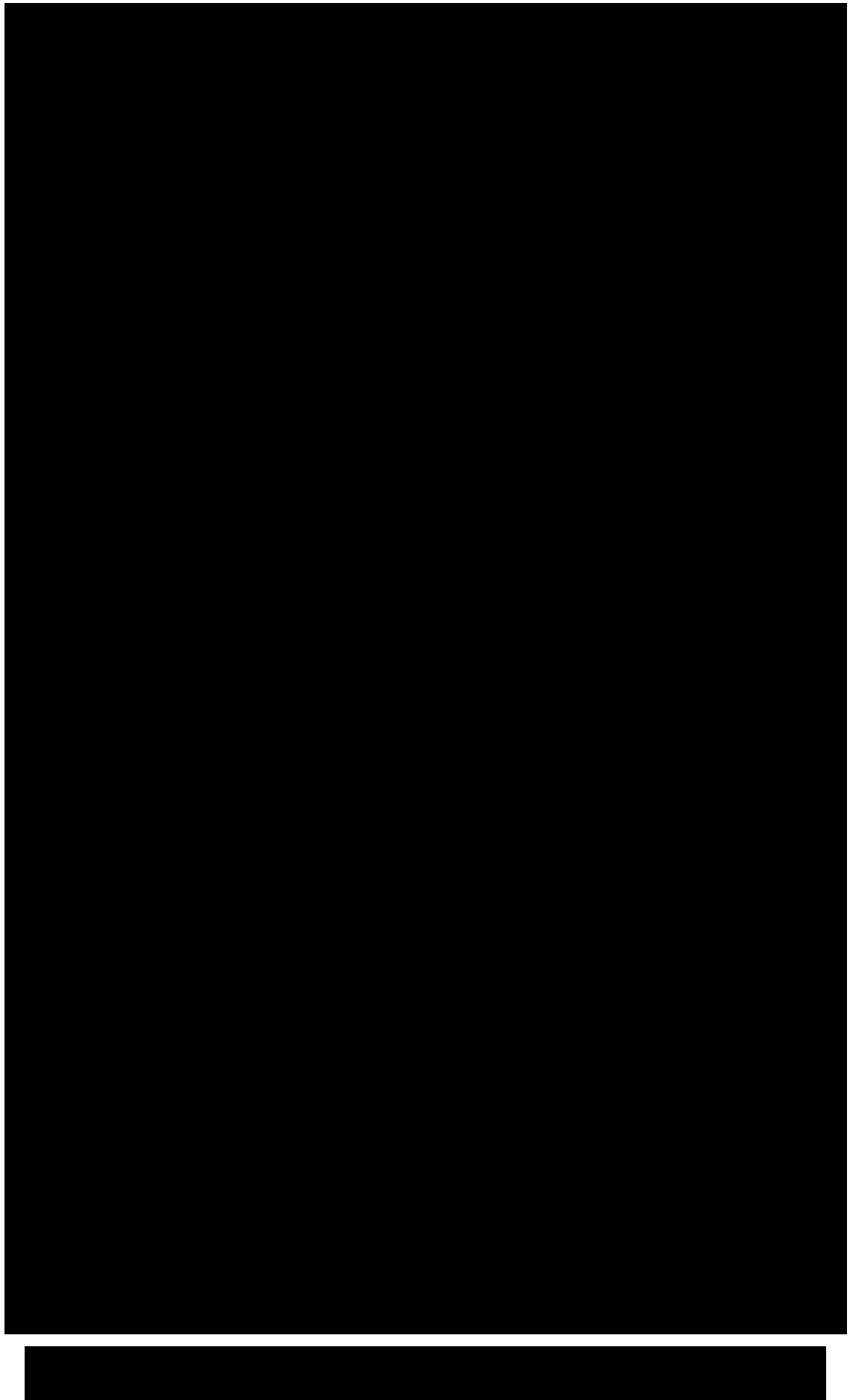
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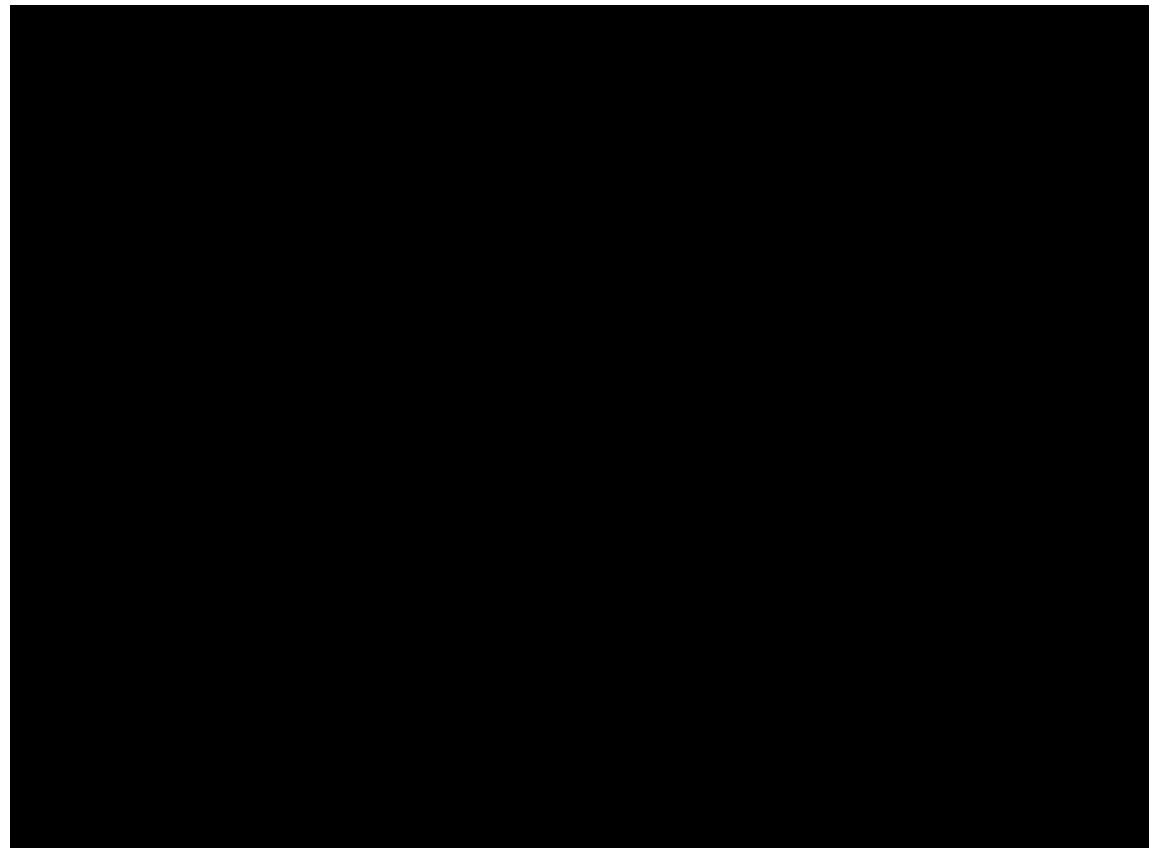
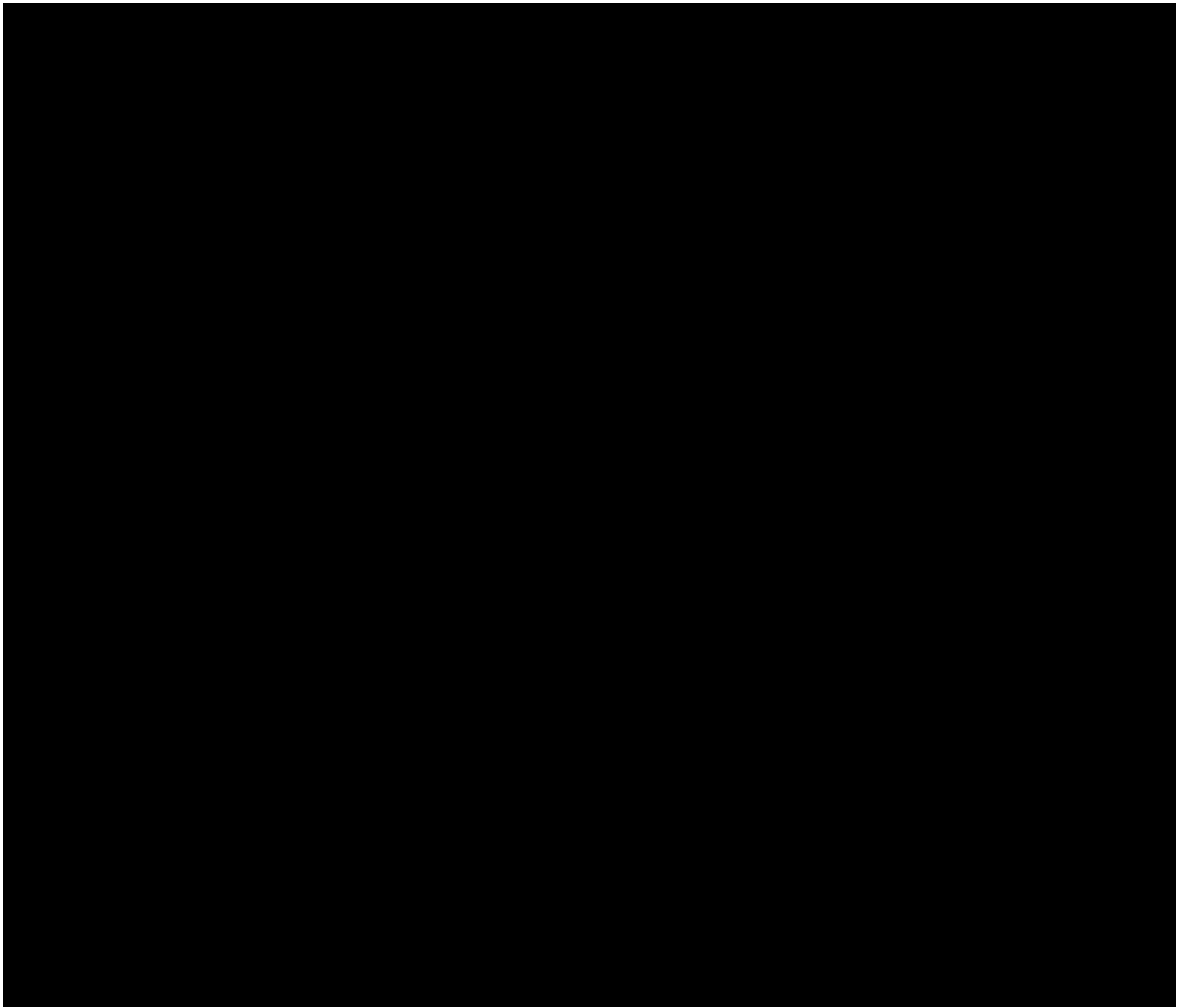
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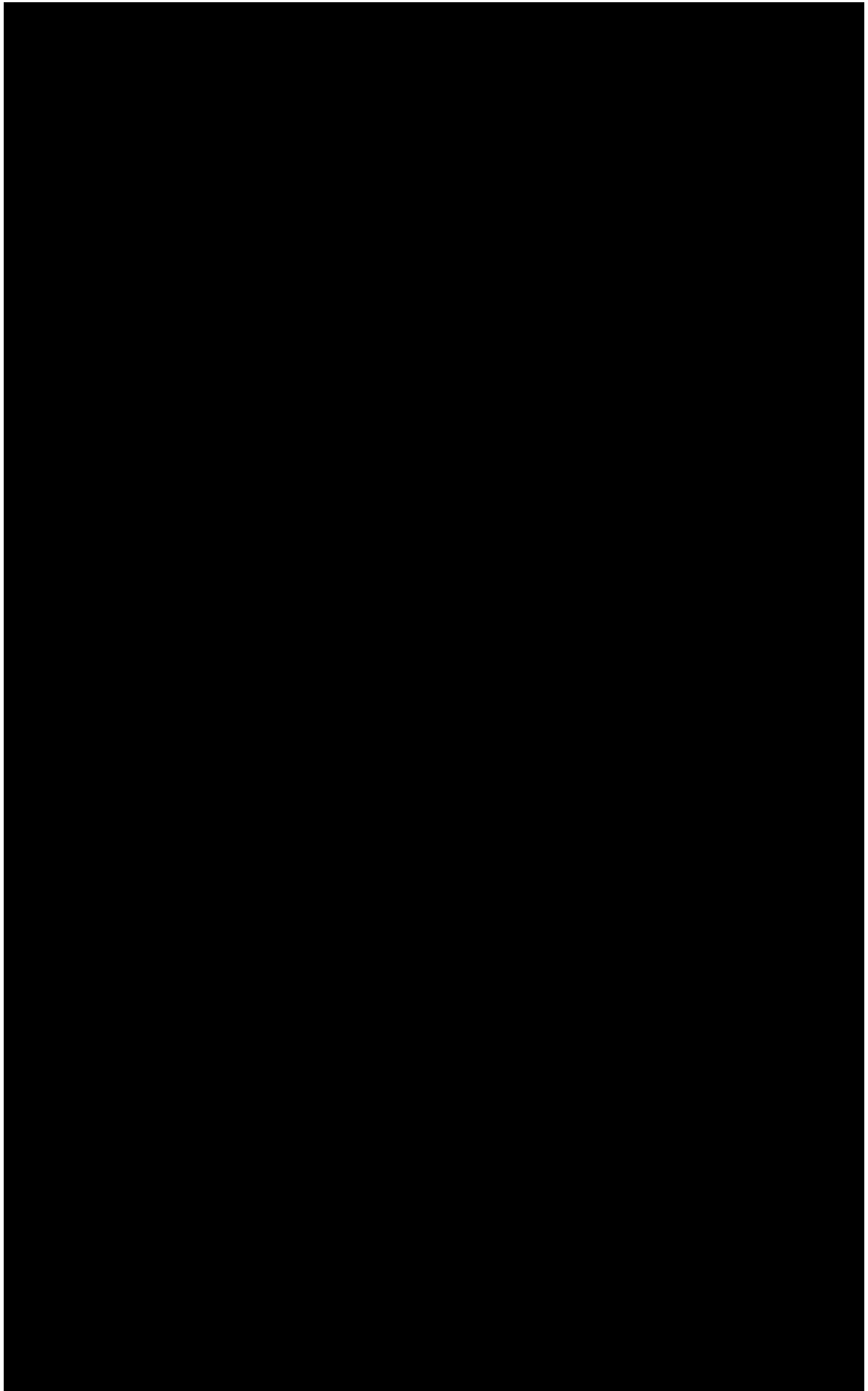
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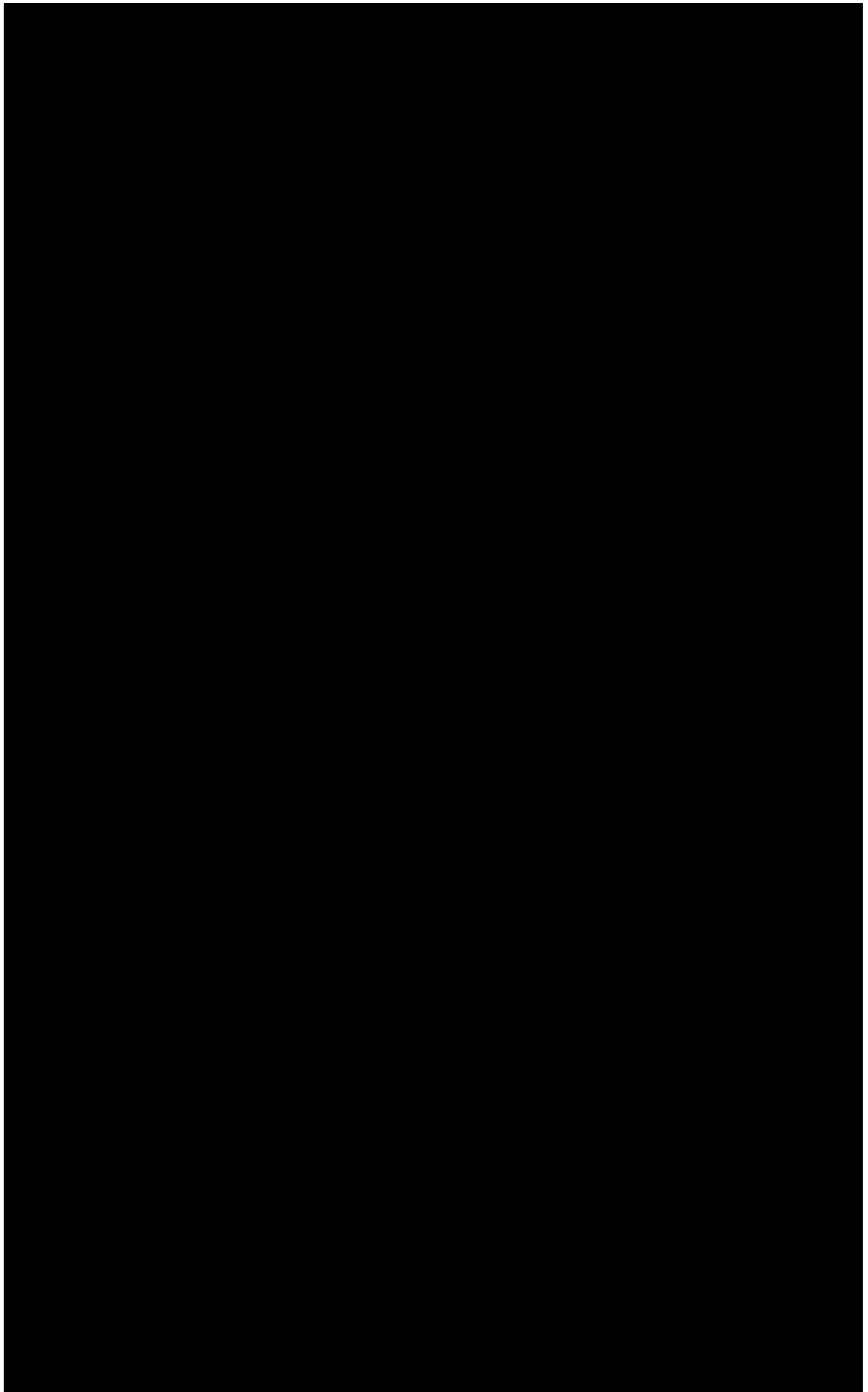
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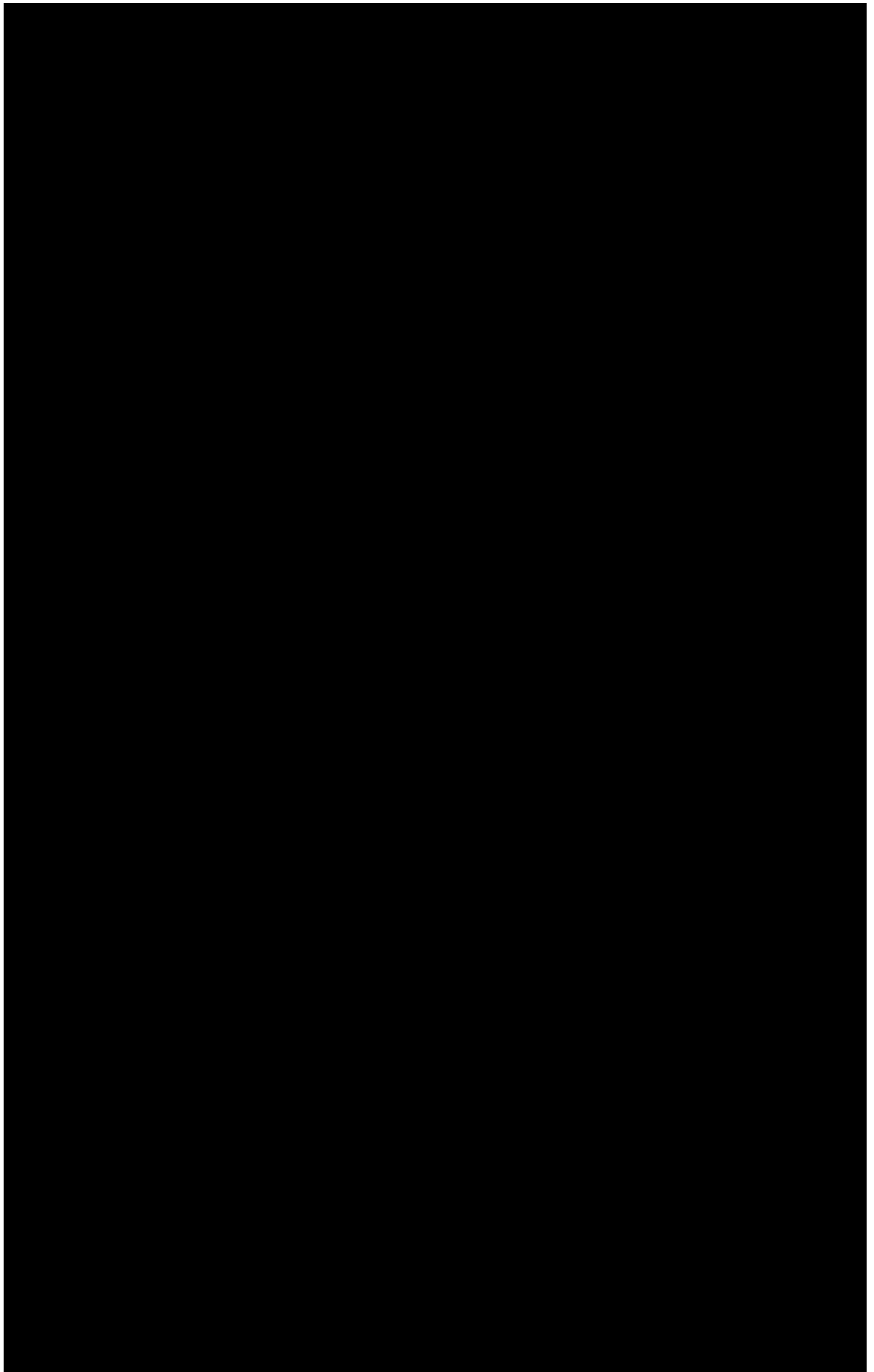
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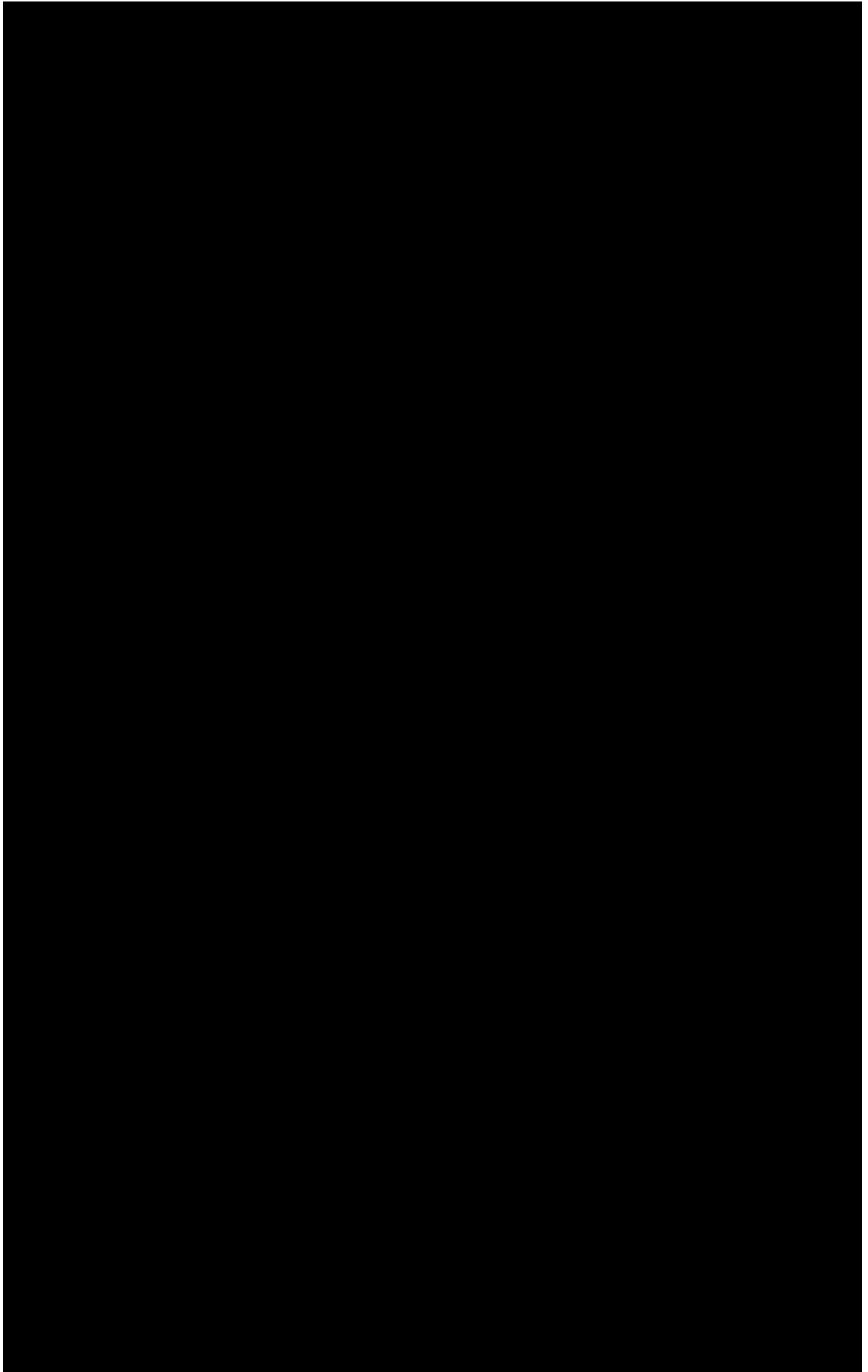
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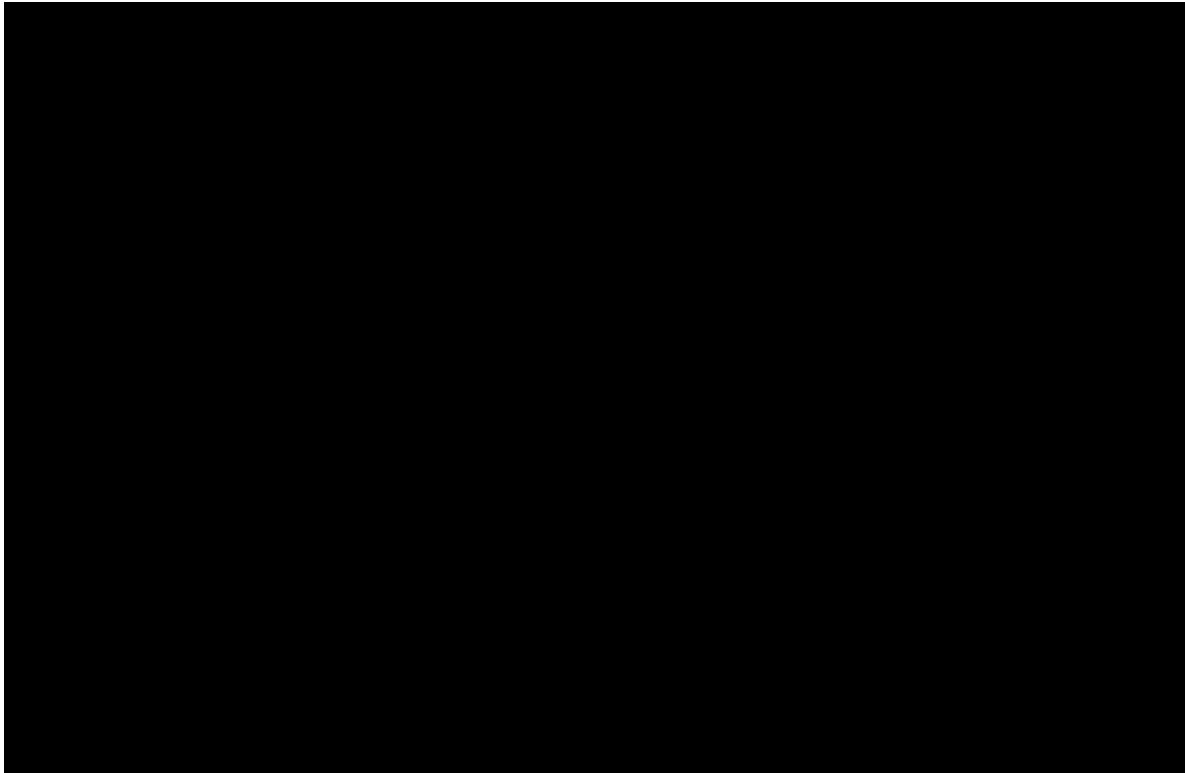
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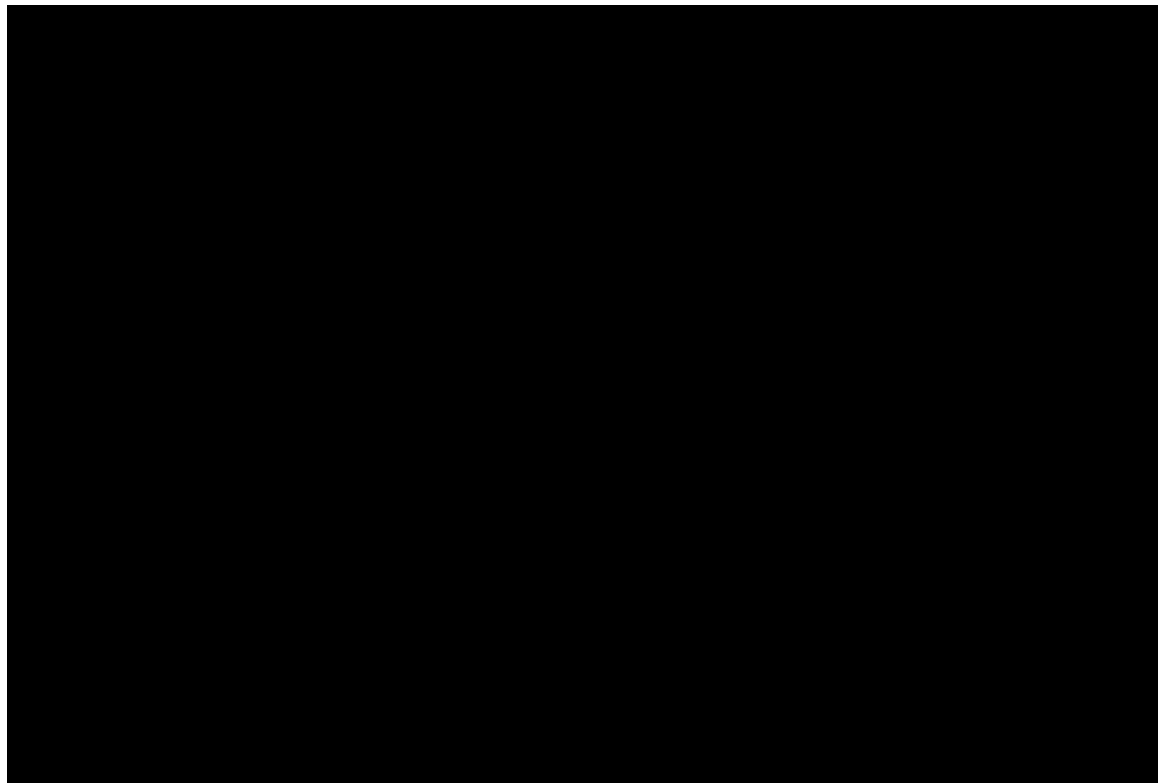


BY MR. ELSNER:

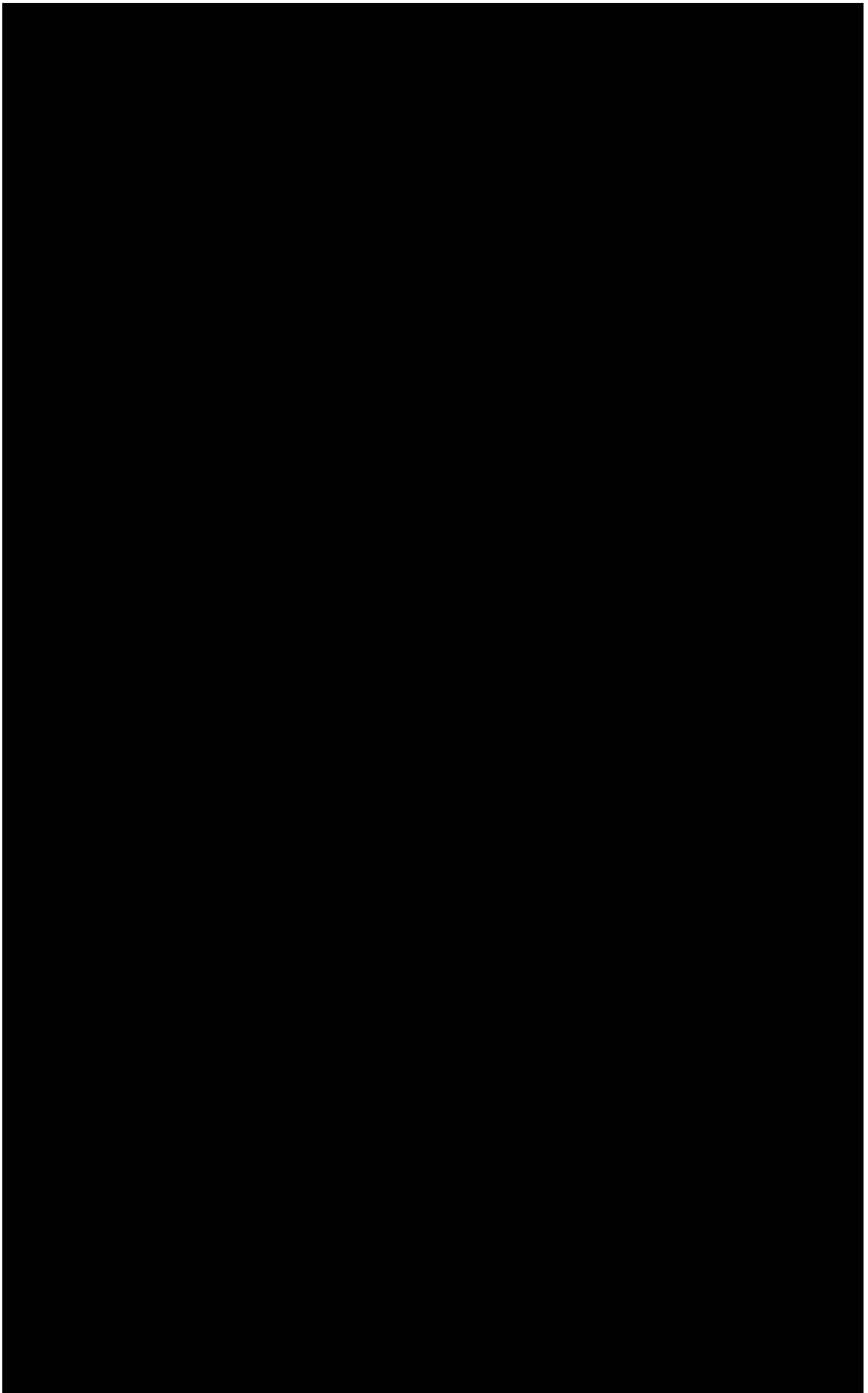
Q. That's the process, right?

MR. HYNES: Objection to form.

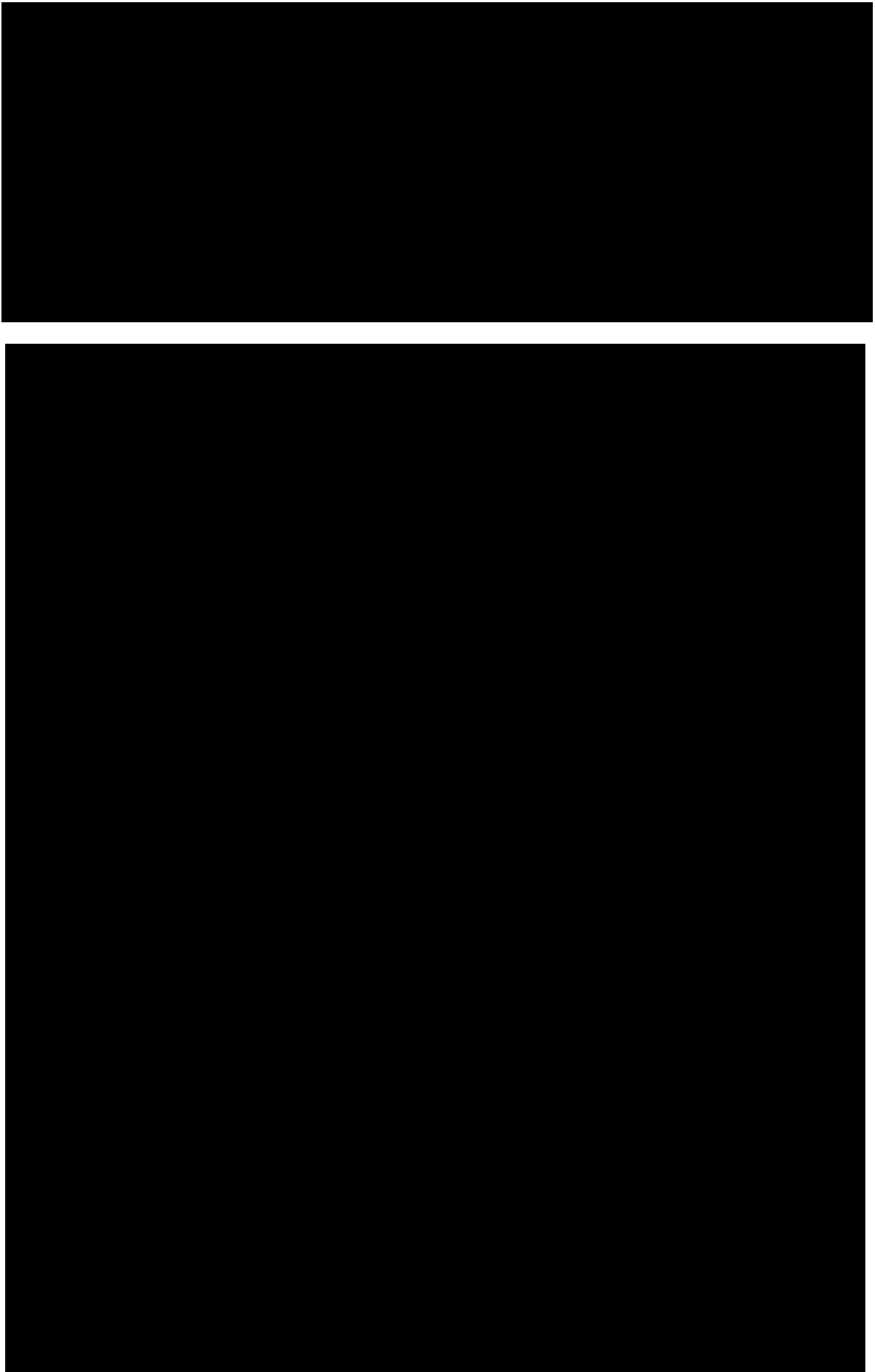
BY THE WITNESS:



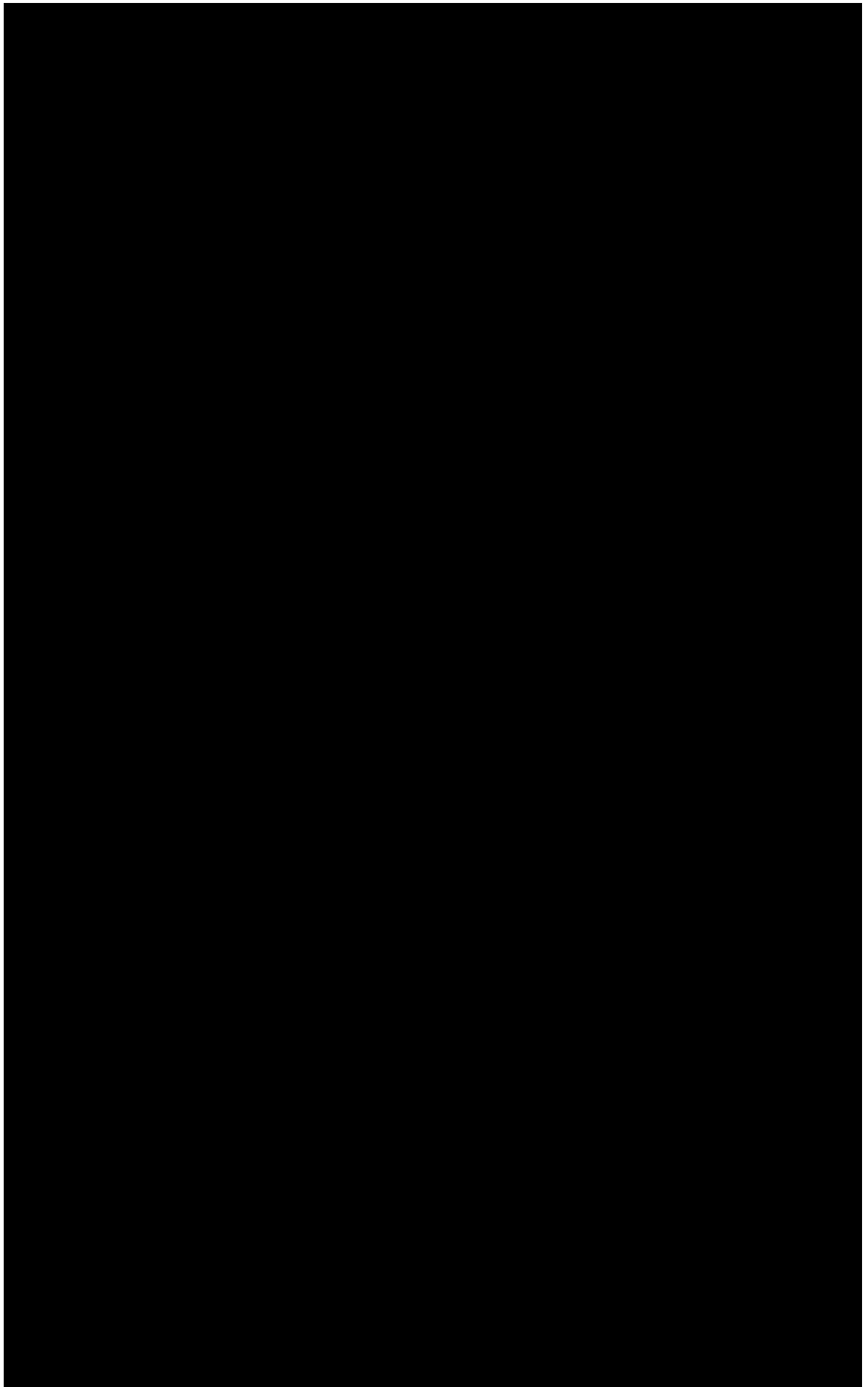
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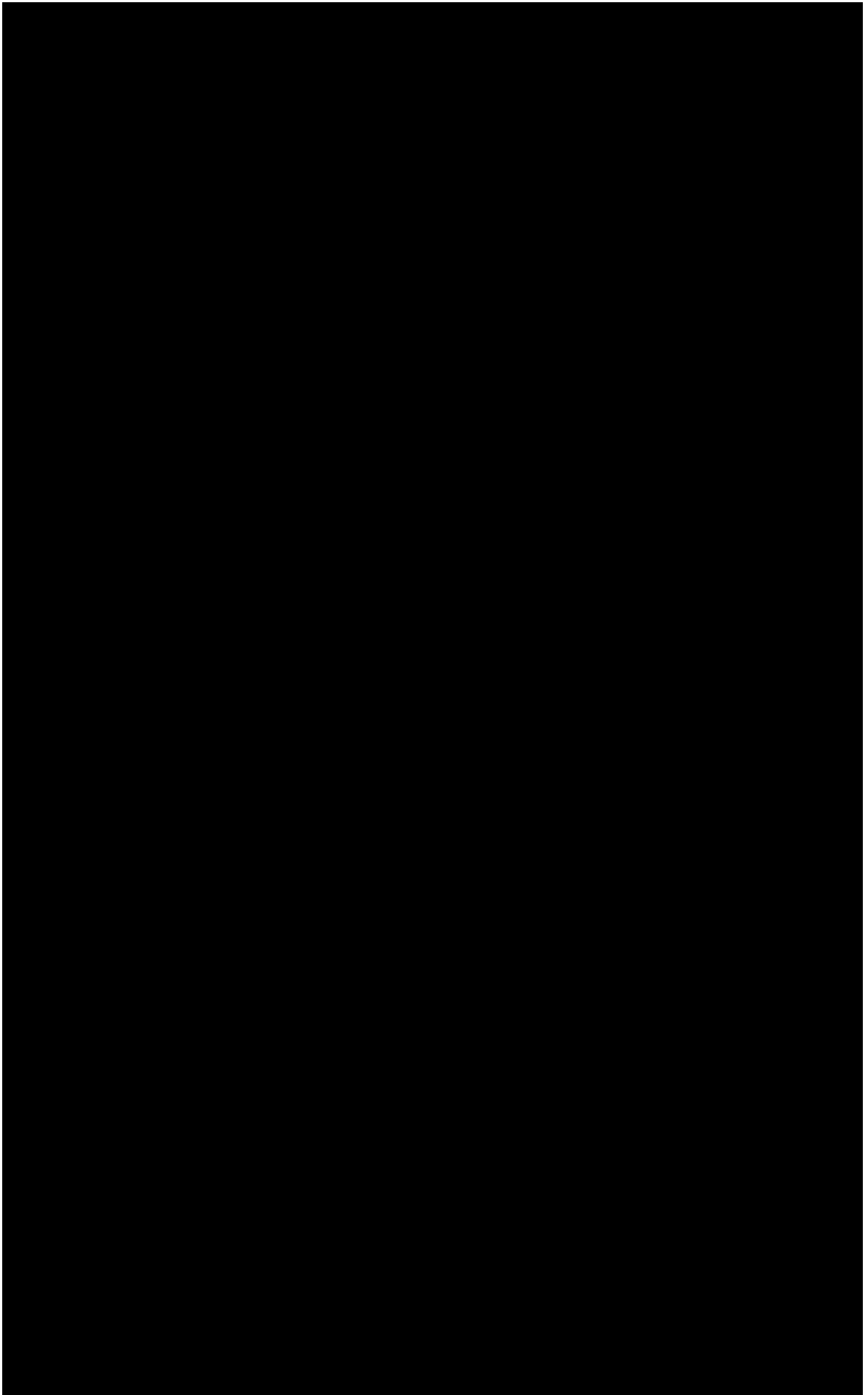
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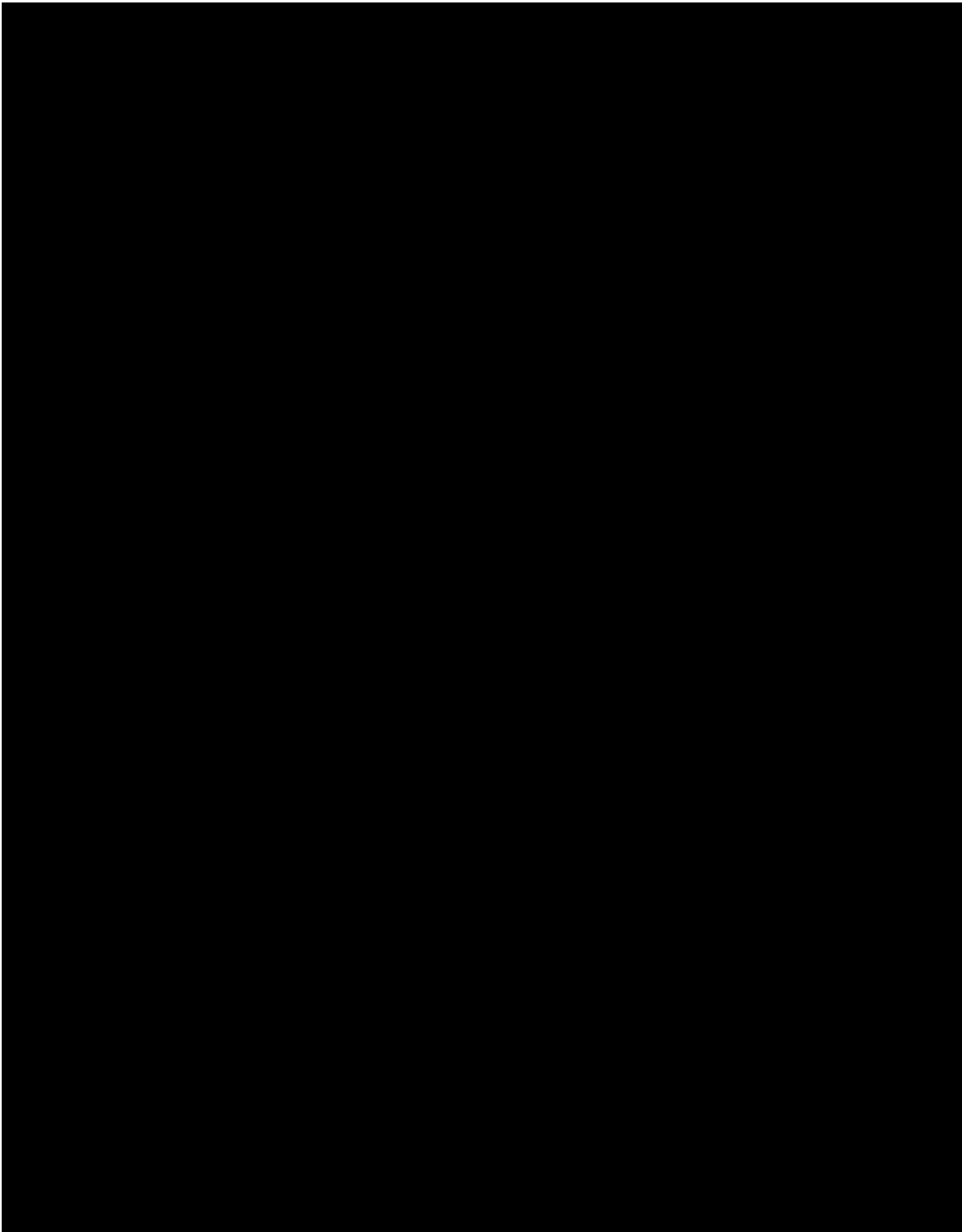
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20 MR. HYNES: I'm going to object on privilege  
21 and direct the witness not to answer.

22 MR. ELSNER: Without asking -- without him  
23 revealing precisely what he asked for, I think I'm  
24 entitled to know what the general subject matter of

1 the inquiry was.

2 MR. HYNES: It shows he forwarded the e-mail  
3 from Gillen, right?

4 MR. ELSNER: Yes.

5 MR. HYNES: I mean, if that's your question, I  
6 think the answer is yes. As to what he said to  
7 counsel, he is not going to discuss that.

8 BY MR. ELSNER:

9 Q. Well, I want to know, I want to know in  
10 this e-mail, were you asking for legal advice from  
11 counsel with respect to this request or were you  
12 describing the conference call you had with Agent  
13 Gillen and the collection of these documents  
14 related to the shipments over the last three years?

15 MR. HYNES: We are -- objection stands. We  
16 are not going to discuss what he said to counsel in  
17 this e-mail.

18 MR. ELSNER: I think I am entitled to know  
19 whether he was asking for legal advice, not asking  
20 what the advice, what the advice was he was  
21 requesting or if he was describing the factual  
22 content of the call he had with them.

23 MR. HYNES: I think even describing the  
24 factual content of the call to them could be a

1 request for legal advice.

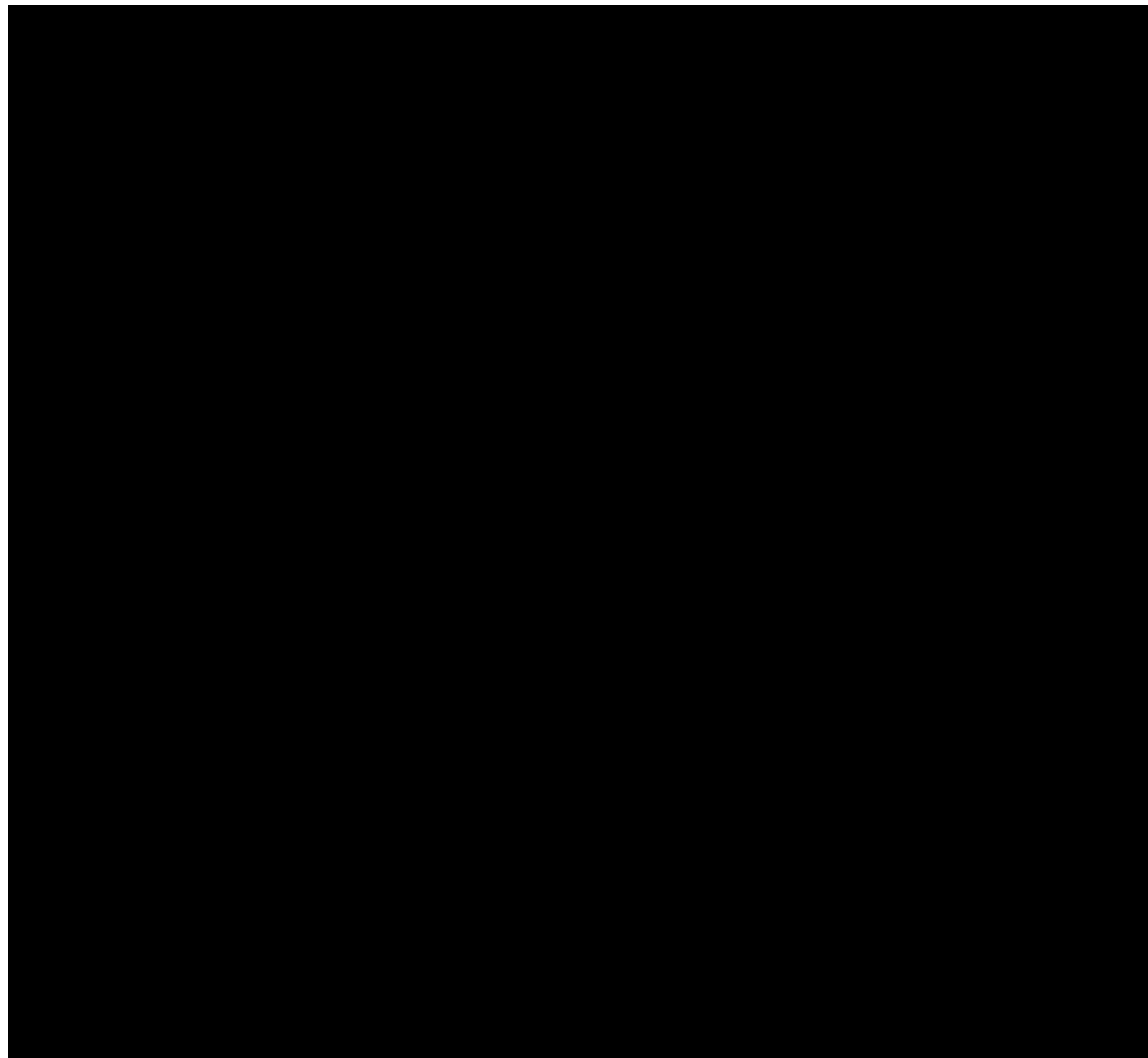
2 MR. ELSNER: I'm going to mark this next  
3 document as Nicastro 38.

4 (WHEREUPON, a certain document was  
5 marked as CVS-Nicastro-038:  
6 11/19/13 e-mail with attachment;  
7 CVS-MDLT1-000076142 - 000076145.)

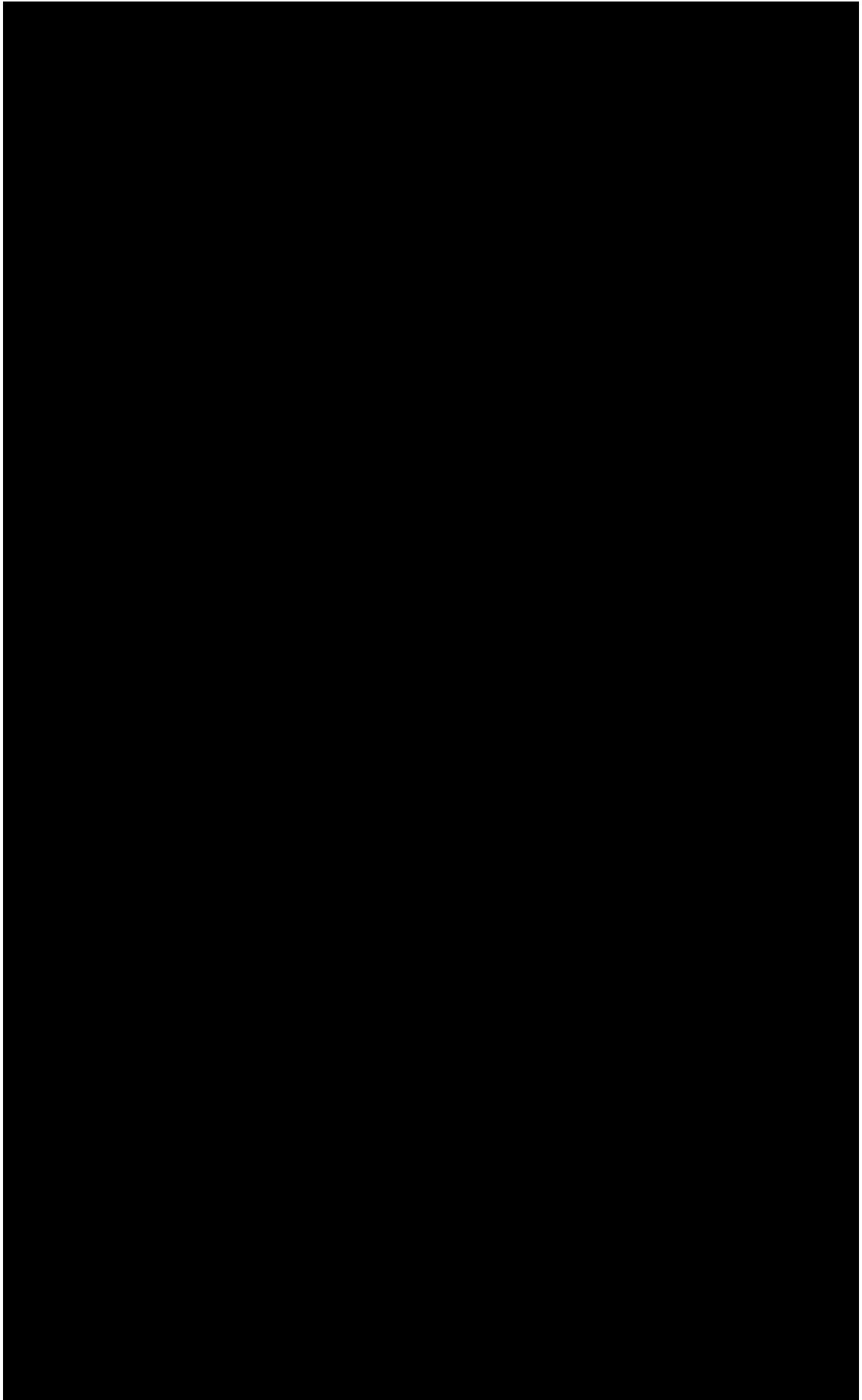
8 BY MR. ELSNER:

9 Q. This is a -- this is 76142. It's  
10 Exhibit 38.

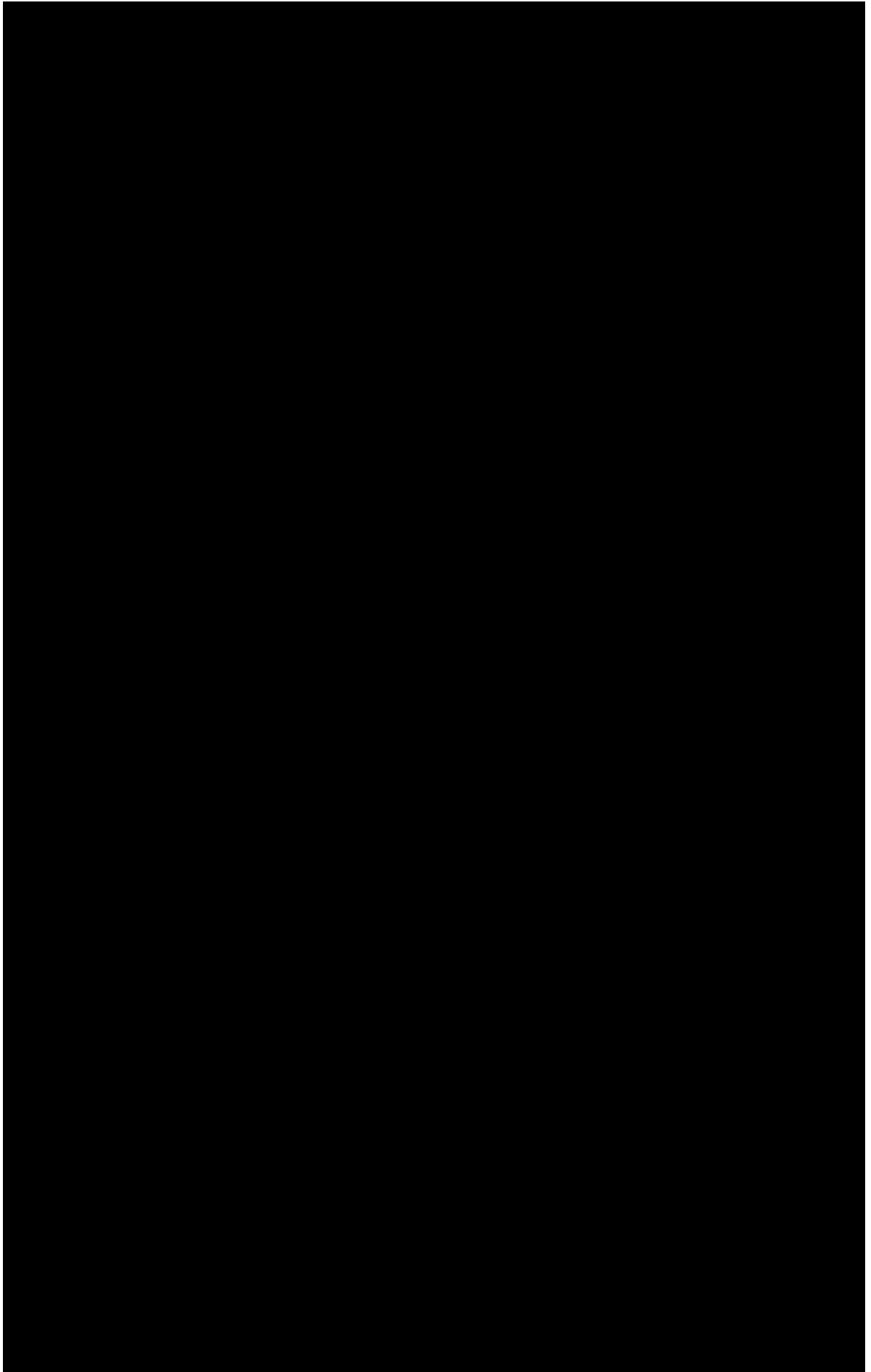
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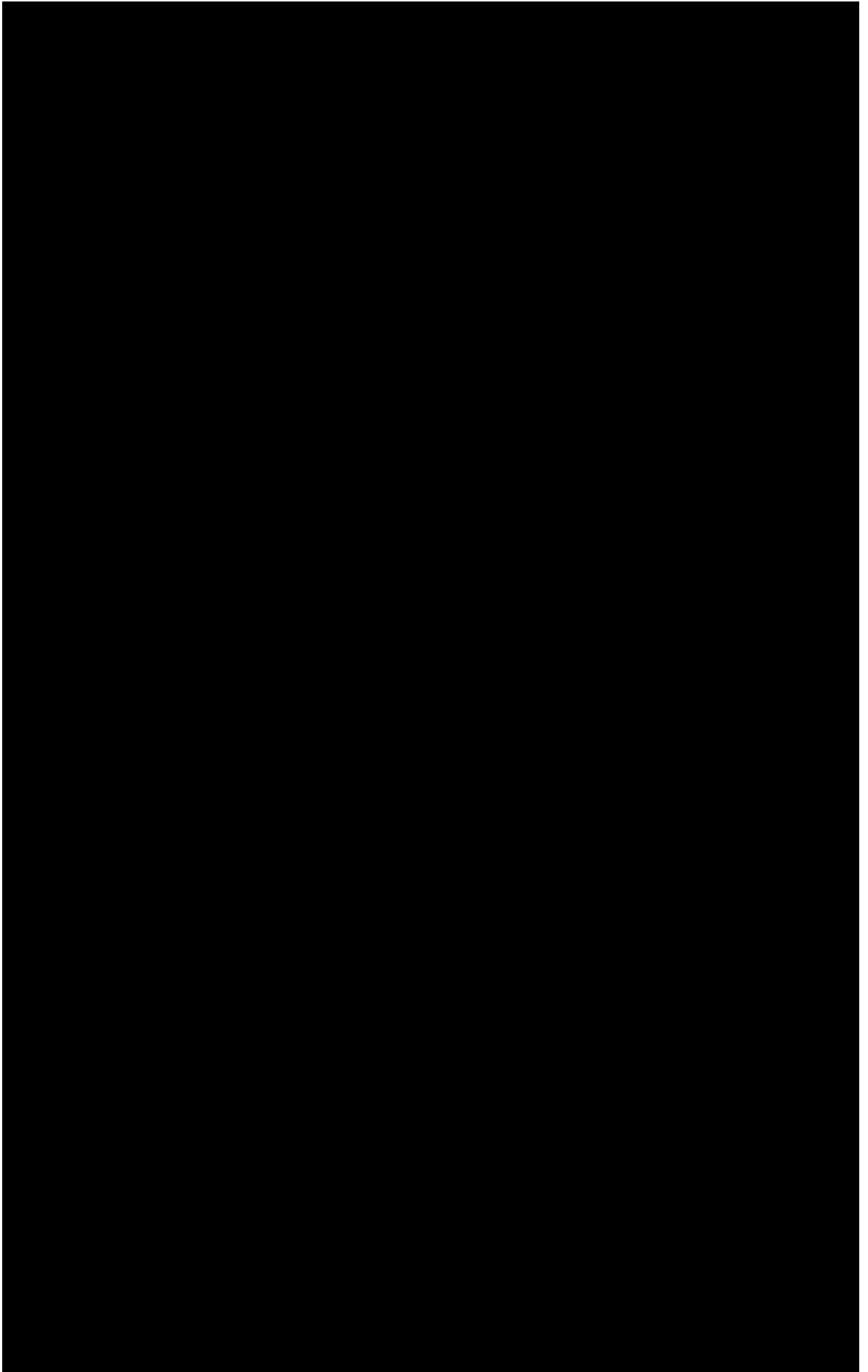
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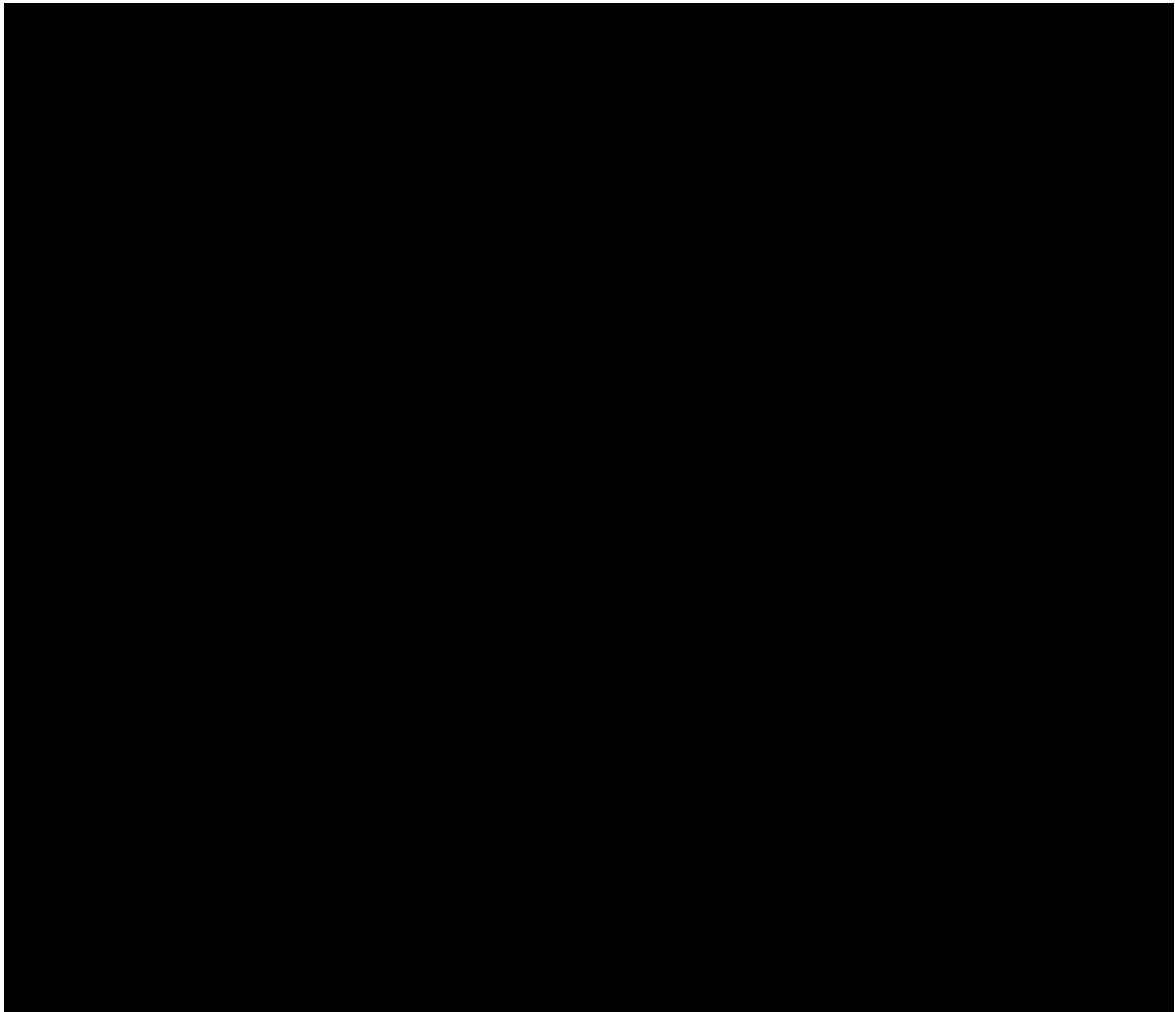
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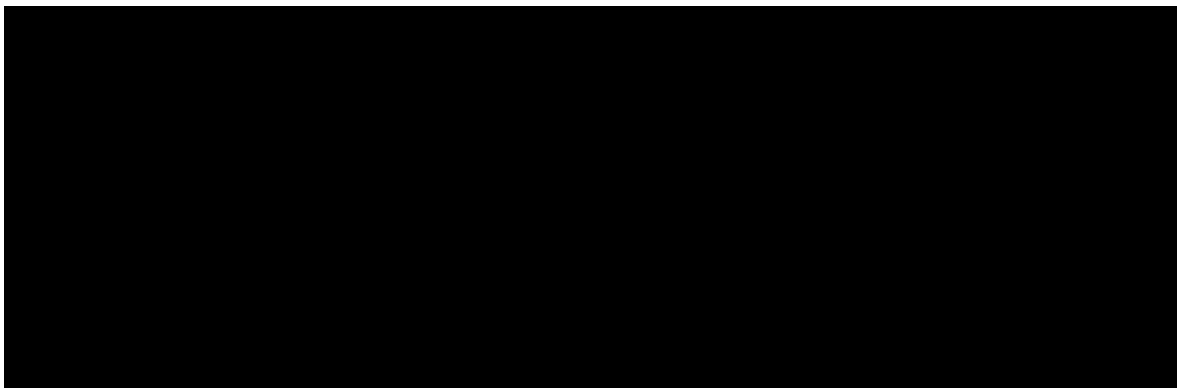


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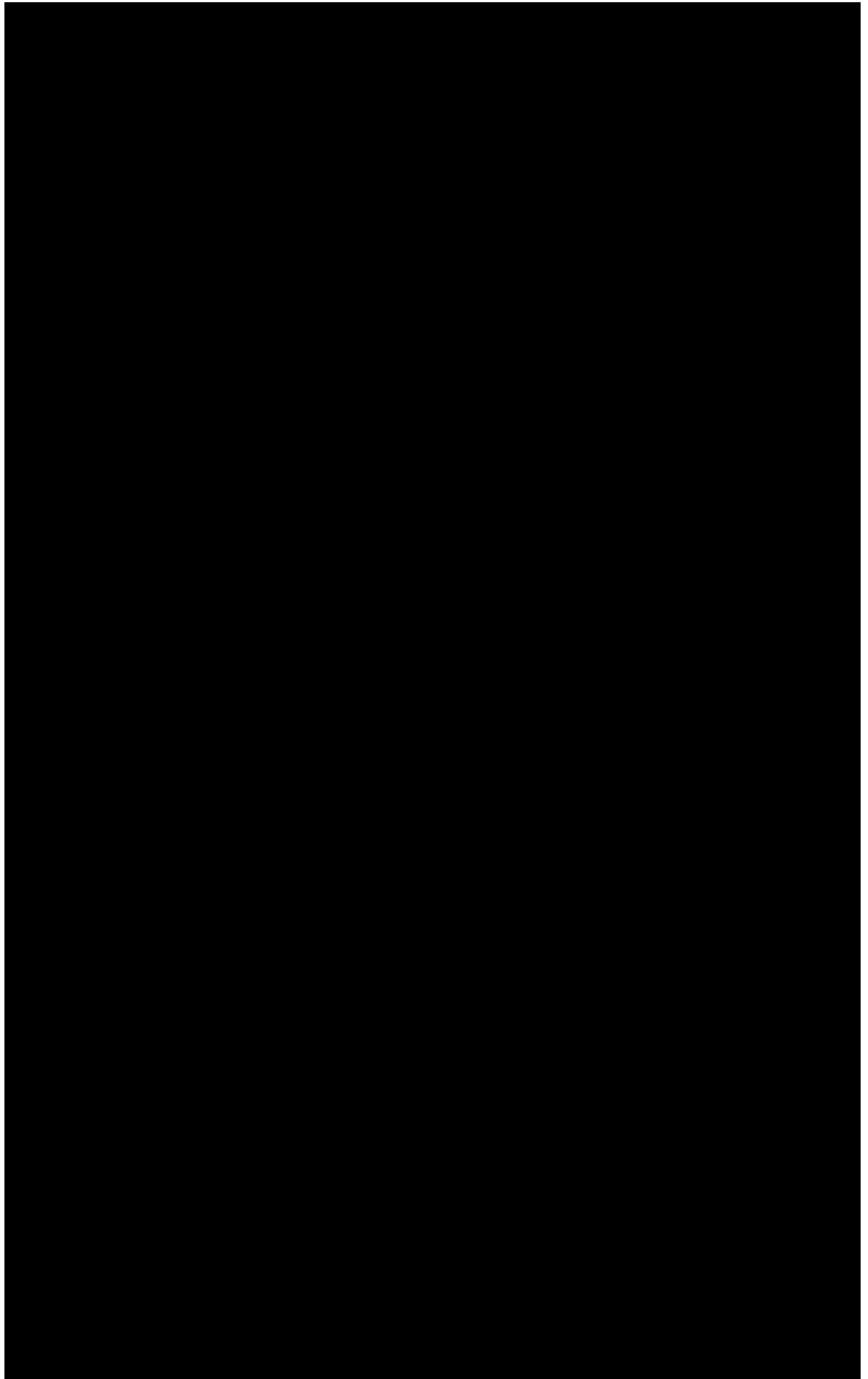


Who is Pamela Hinkle at this time? What position did she hold at CVS?

A. I'm not sure what her title was at this point, but she was very involved with DEA compliance, DEA relationships with all the facilities.



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1 MR. HYNES: Objection; asked and answered.

2 BY MR. ELSNER:

3 Q. This is --

4 MR. ELSNER: Actually, this may be a good time  
5 for a break.

6 MR. HYNES: Okay.

7 MR. ELSNER: Why don't we take a quick break.

8 THE VIDEOGRAPHER: We are going off the record  
9 at 2:07.

10 (WHEREUPON, a recess was had  
11 from 2:07 to 2:20 p.m.)

12 THE VIDEOGRAPHER: We're back on the record at  
13 2:20.

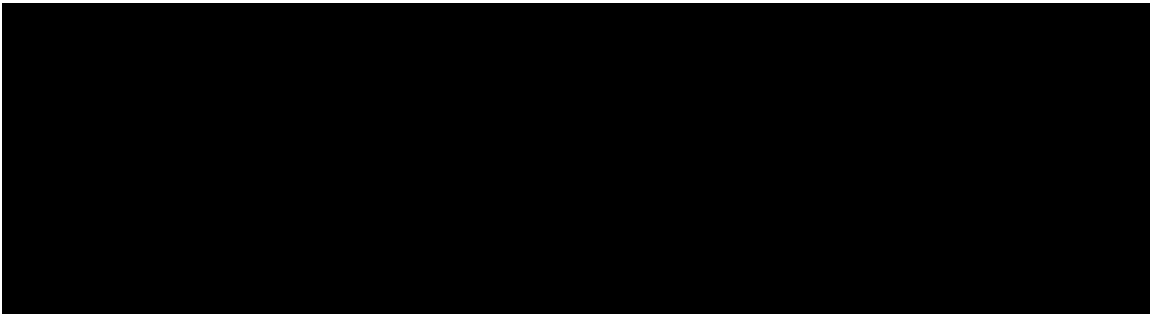
14 BY MR. ELSNER:

15 Q. I'm going to show you Exhibit 41.

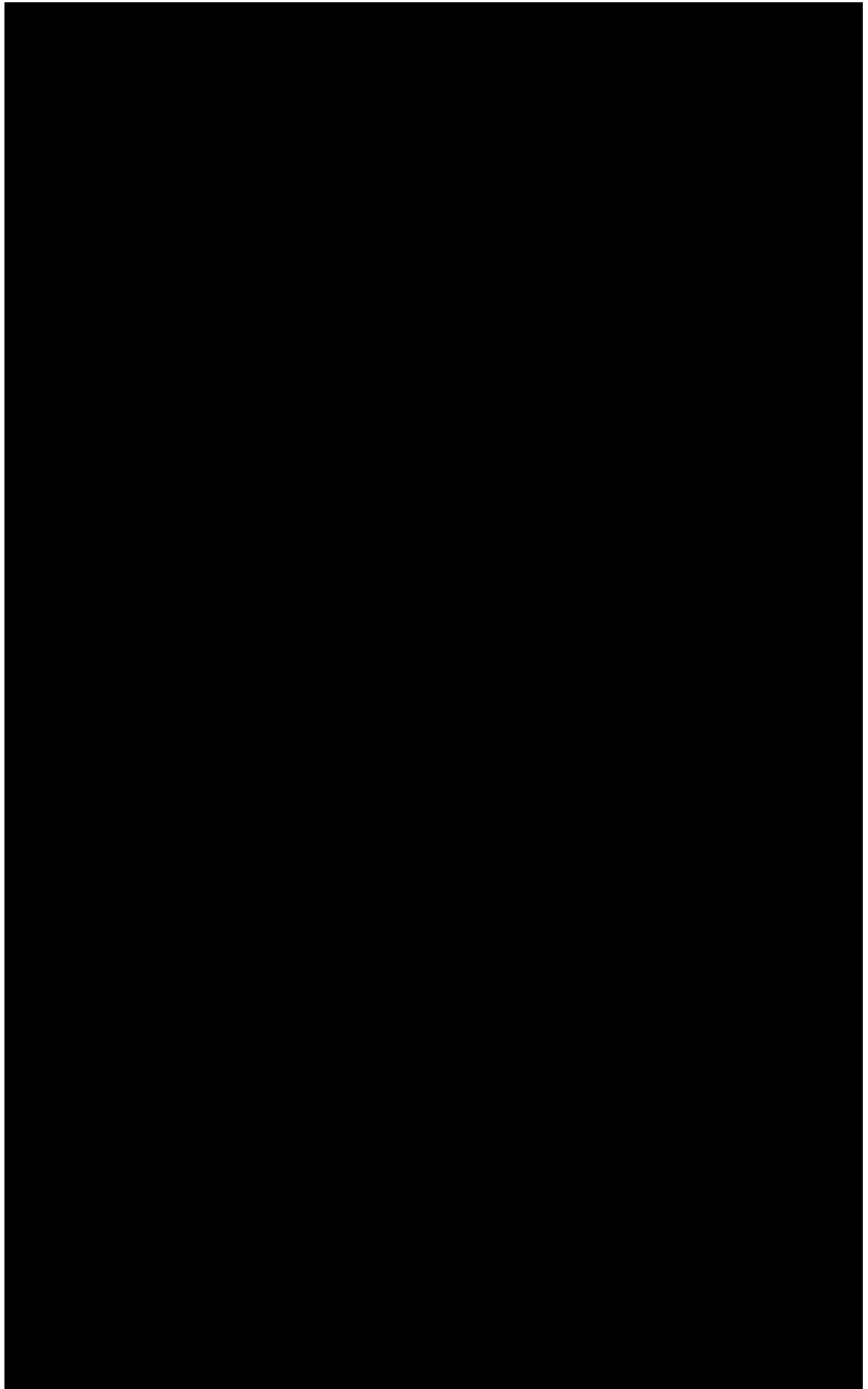
16 (WHEREUPON, a certain document was  
17 marked as CVS-Nicastro-041:  
18 11/21/13 e-mail;  
19 CVS-MDLT1-000076127.)

20 BY MR. ELSNER:

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1           A.       That's -- that was what Mr. Gillen  
2 suggested many times.

3 BY MR. ELSNER:

4           Q.       And you believe that if you had more  
5 stopped orders to show him, then he would have been  
6 satisfied that you had a suspicious order  
7 monitoring system in place that was robust,  
8 correct?

9           MR. HYNES: Objection to form.

10 BY THE WITNESS:

11          A.       To satisfy him.

12 BY MR. ELSNER:

13          Q.       I'm going to show you Exhibit 42.

14                   (WHEREUPON, a certain document was  
15 marked as CVS-Nicastro-042:  
16 11/21/13 e-mail with attachments;  
17 CVS-MDLT1-000000409 - 000000420.)

18 BY MR. ELSNER:

19          Q.       And this is a copy of the final letter  
20 that you e-mailed to Agent Gillen with a cover  
21 e-mail.

22                   Do you see that?

23          A.       Yes.

24          Q.       And this is November 21, 2013, right?

1           A.       Correct.

2           Q.       And you write, "Hello Dan. I apologize  
3   for all the attachments, but the information I've  
4   included provides a clear strategy on how we manage  
5   suspicious orders," and then it provides a list of  
6   the various things that you were going to provide  
7   him, correct?

8           A.       Yes.

9           Q.       And if you switch to the letter on the  
10   second page, which is at 410, in the second  
11   paragraph, you write, "In our" -- to Mr. Gillen,  
12   "In our conversation on November 14," this is the  
13   third sentence of the second paragraph, "you had  
14   concerns about our SOM process, specifically  
15   stating that you were going to report to your  
16   program manager in Chicago that we have no  
17   reporting structure in place."

18                   Is that what you wrote?

19           A.       That's -- that's what I wrote because  
20   that's what he said.

21           Q.       Because that's what he said in your  
22   conference call on November 14 to you, correct?

23           A.       In our -- yes, yes. I was thinking we  
24   had that conversation during the audit, the

1 meeting.

2 Can I verify that date real quick  
3 from --

4 Q. Well, whether it was on the 13th or the  
5 14th, in the letter that's the conversation you are  
6 referring to, right, is that call you had with him  
7 where he expressed concern that you didn't have a  
8 suspicious order monitoring program in place,  
9 correct?

10 A. Yes.

11 Q. There was only that one call or were  
12 there other calls like that between you and him  
13 during this time period?

14 A. We had many calls. I couldn't tell you  
15 what exactly was on each phone call. But -- but we  
16 did -- we had this conversation.

17 Q. You had this conversation. Okay.

18 How many calls did you have with Agent  
19 Gillen before you sent this letter concerning the  
20 SOM program and his -- and the DEA's concern about  
21 CVS' SOM program?

22 A. The only conversations I would have had  
23 with him from the time of our audit would have been  
24 from the time of our audit until this

1 November 14th. I hadn't -- I hadn't met Mr. Gillen  
2 before he came in for our audit in August.

3 Q. And if you turn to the attachment, among  
4 the attachments to the letter is a list of the stop  
5 orders and the reports to the DEA. This is on 417,  
6 correct?

7 A. Yes.

8 Q. Okay. And this is what you sent to  
9 Agent Gillen in response to his request for a list  
10 of all of the stop orders that CVS had made and  
11 reports that it had made to the DEA, correct?

12 MR. HYNES: Objection to form.

13 BY THE WITNESS:

14 A. That's correct.

15 BY MR. ELSNER:

16 Q. Okay. And it lists seven suspicious  
17 orders that were stopped, right?

18 A. Yes, there are seven orders on this  
19 document.

20 Q. The following day, Agent Gillen writes a  
21 letter to you. This is Exhibit 43.

22 (WHEREUPON, a certain document was  
23 marked as CVS-Nicastro-043:

24 11/25/13 e-mail string;

1 CVS-MDLT1-000000421 - 000000422.)

2 BY MR. ELSNER:

3 Q. And he -- he sends an e-mail to you and  
4 he thanks you for your responses.

5 Actually, let me have you turn to  
6 page 422. The e-mail is on the very bottom of 421.  
7 It's an e-mail he sends November 22, 2013.

8 MR. HYNES: Starts at the bottom.

9 MR. ELSNER: Starts at the bottom of the first  
10 page.

11 MR. HYNES: And goes over.

12 THE WITNESS: Okay.

13 BY MR. ELSNER:

14 Q. And then it says --

15 MR. ELSNER: It's actually a little bit lower,  
16 Gina. It's at the bottom of that. Am I right  
17 about that? On 421.

18 MR. HYNES: We got it. We're good.

19 BY MR. ELSNER:

20 Q. And then on the 422 he asks, "We were  
21 under the impression that sales of controlled  
22 substances from your DC location in Indianapolis  
23 were for approximately six states in the region but  
24 you provided a list of four pharmacies that CVS had

1     stopped shipments to in 2012 and 2013 for  
2     California, Texas and Hawaii. Could you please  
3     confirm that these shipments originated from your  
4     CVS DC location. Also by 'stopped' does that mean  
5     that no further orders were filled at these  
6     pharmacies for controlled substances? Appreciate  
7     the clarification."

8                     Did I read that right?

9             A.     You did.

10            Q.     Okay. And that's what Agent Gillen  
11     wrote to you after he received your letter,  
12     correct?

13            A.     Correct.

14            Q.     And then you responded to that on  
15     November 25, which is on page 421, and you write to  
16     him in the second line, "No, those shipments did  
17     not originate from the Indianapolis distribution  
18     center." And then you write, "Our SOM algorithms  
19     are the same algorithms for all the distributions  
20     in the CVS chain."

21                     Is that what you wrote?

22            A.     It is.

23            Q.     Okay. And, so, this attachment that we  
24     were looking at of these seven stopped orders are

1     seven stopped orders not from the Indianapolis  
2     distribution center, correct?

3           A.     Correct.

4           Q.     These were all of the stopped orders for  
5     all CVS distribution centers across the entire  
6     country, right?

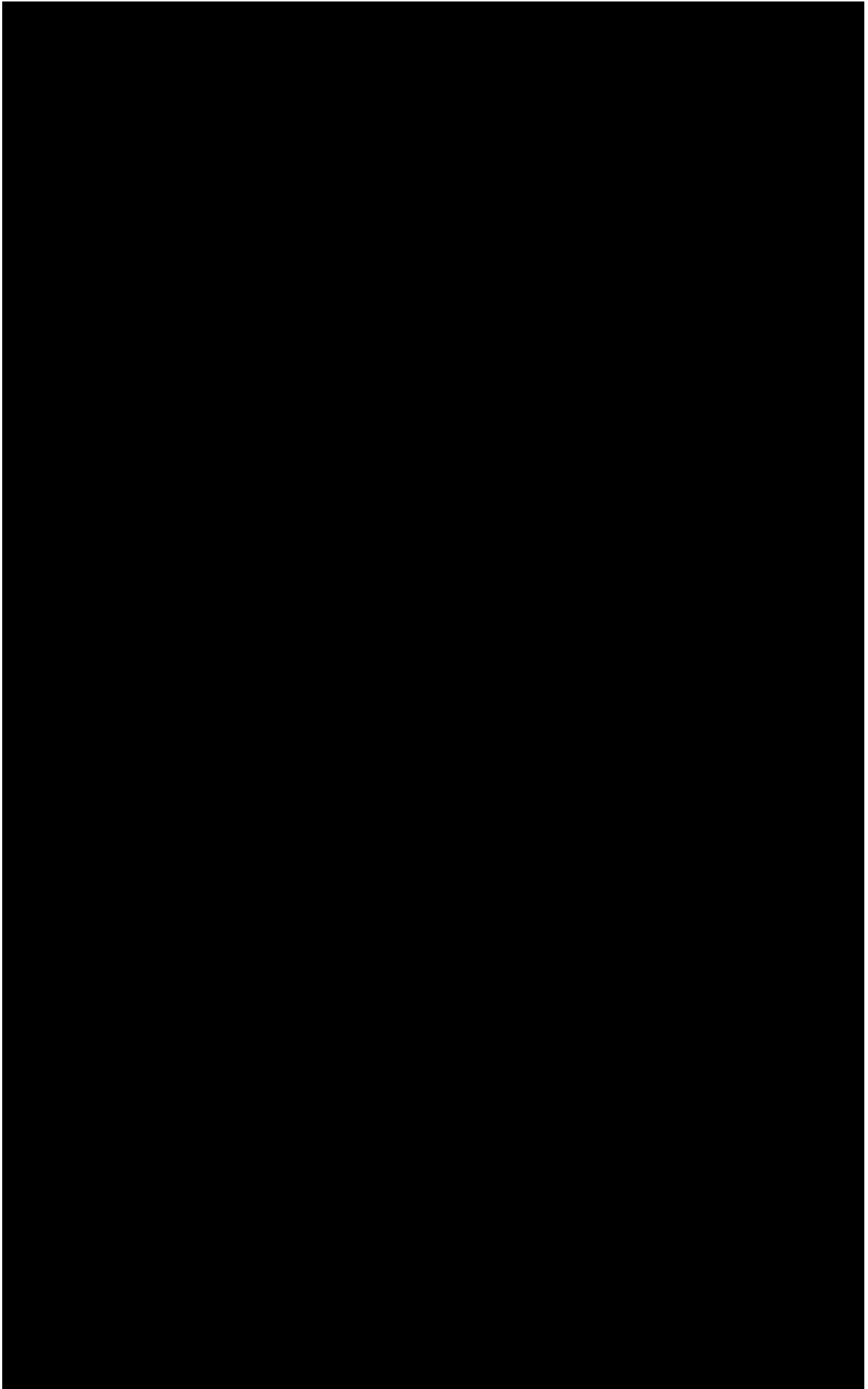
7           MR. HYNES:   Objection to form.

8     BY THE WITNESS:

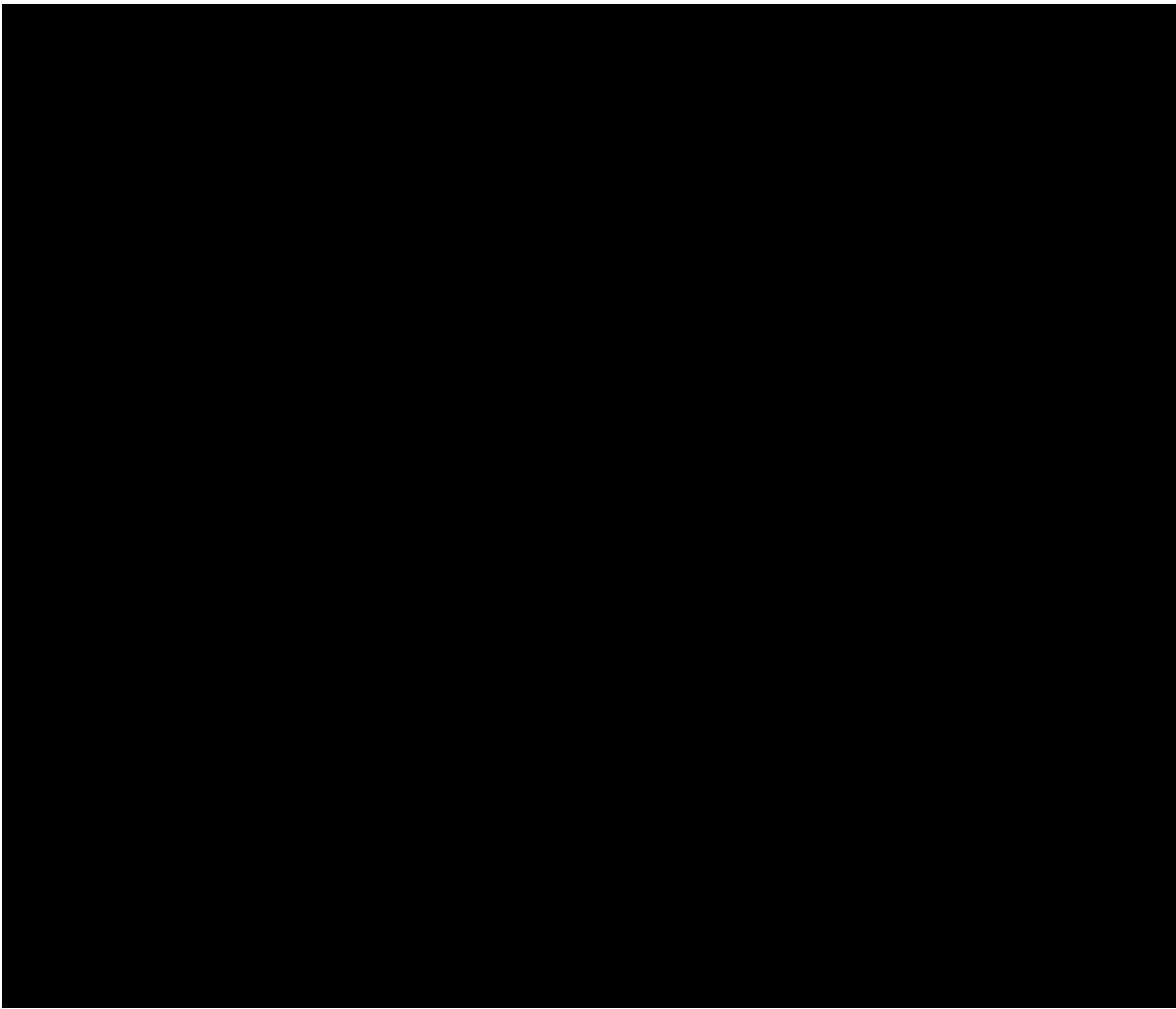
9           A.     Yes.



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Q. But there were no suspicious orders reported for sales of hydrocodone or other controlled substances into stores in Ohio, is that right?

MR. HYNES: Objection to form.

BY THE WITNESS:

A. That -- yes.

MR. ELSNER: Let's see Exhibit 44.

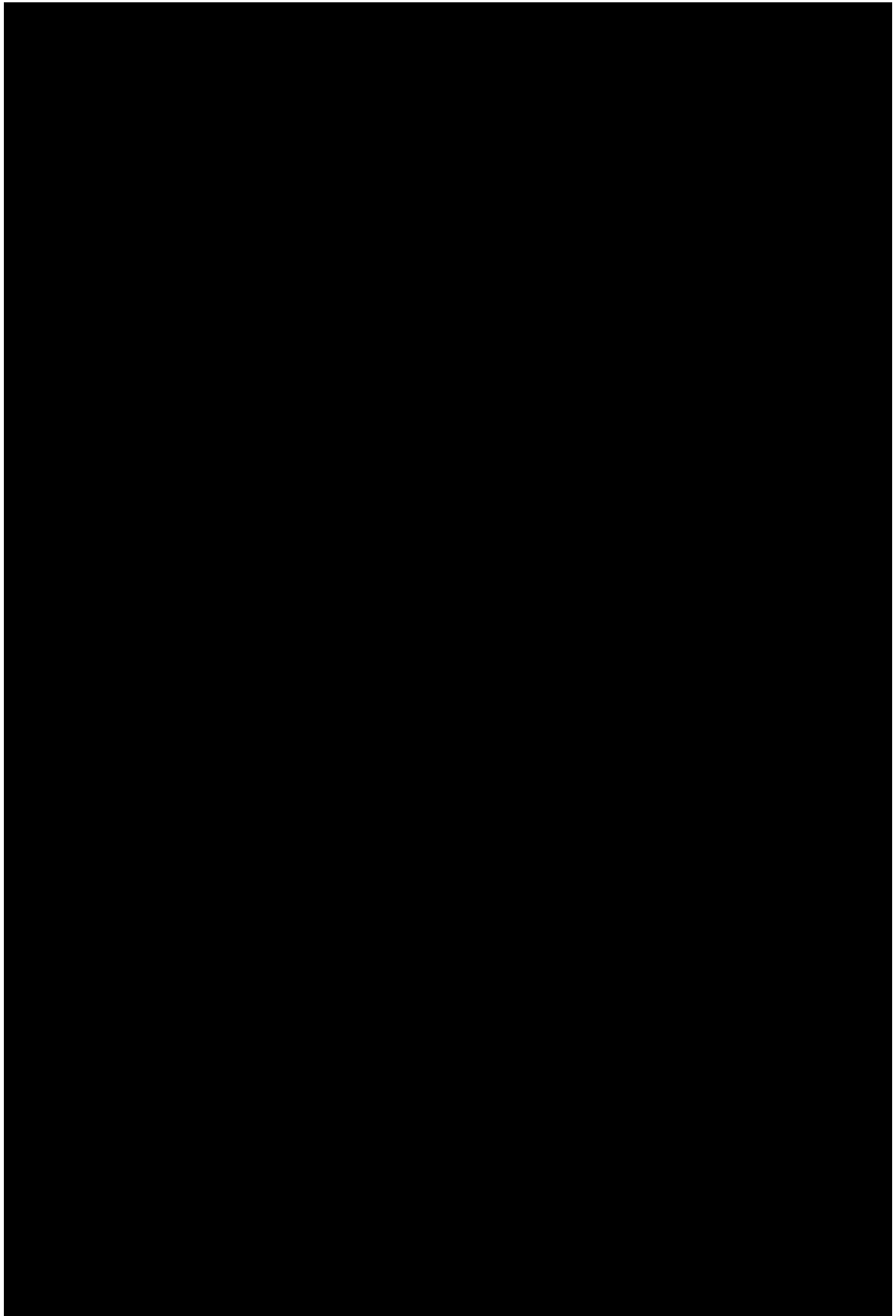
(WHEREUPON, a certain document was marked as CVS-Nicastro-044:

11/25/13 e-mail;

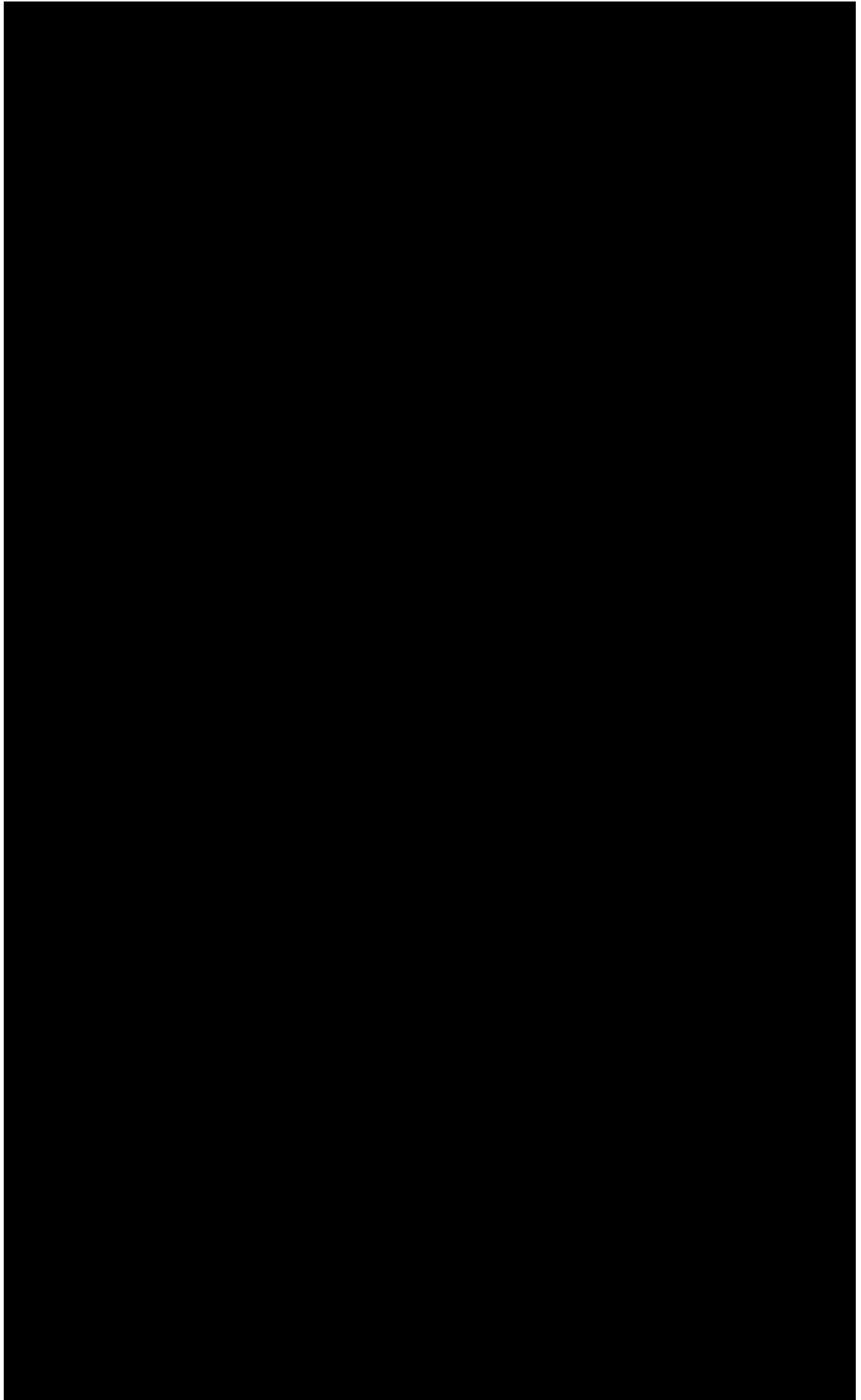
1 CVS-MDLT1-000076135.)

2 BY MR. ELSNER:

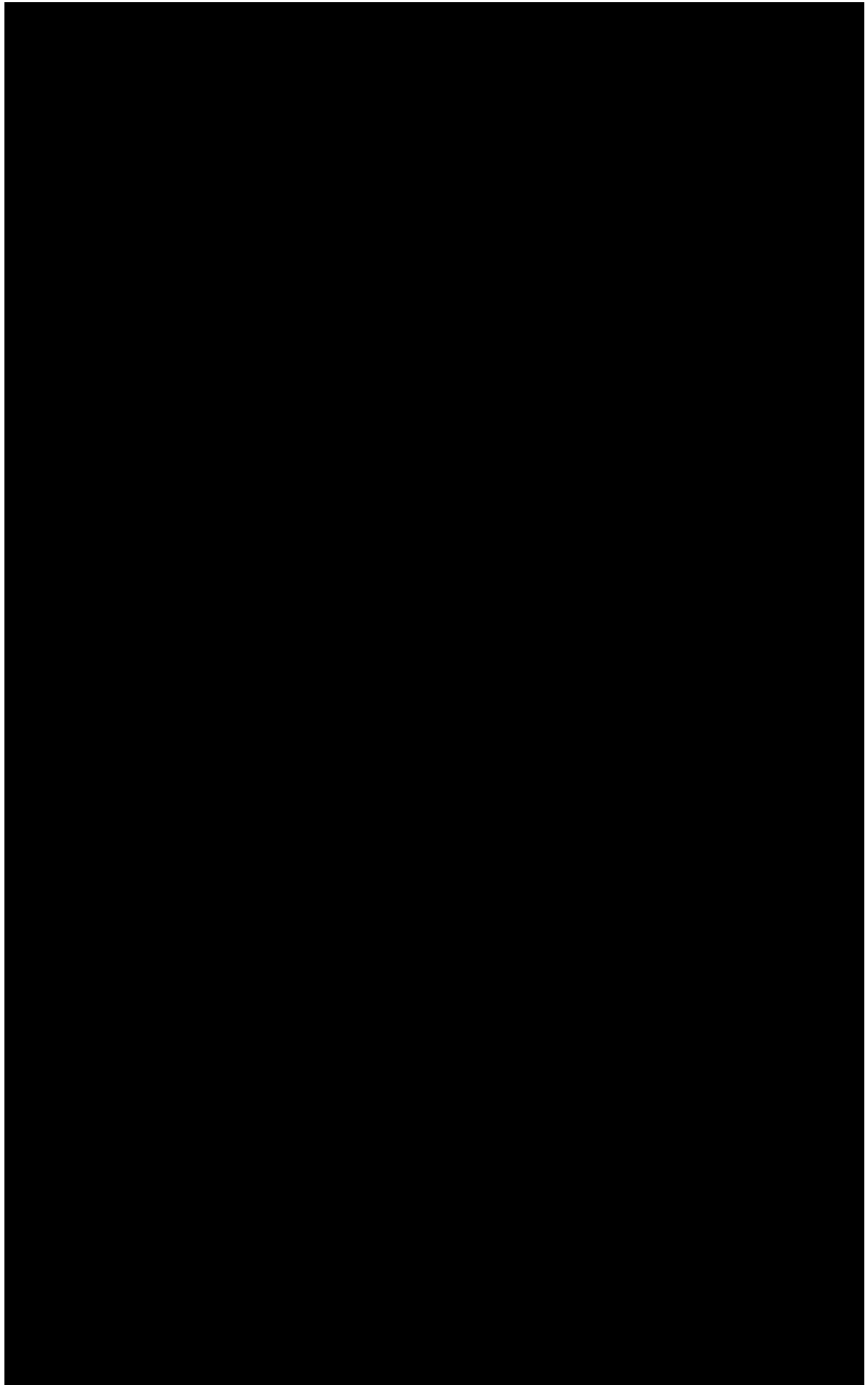
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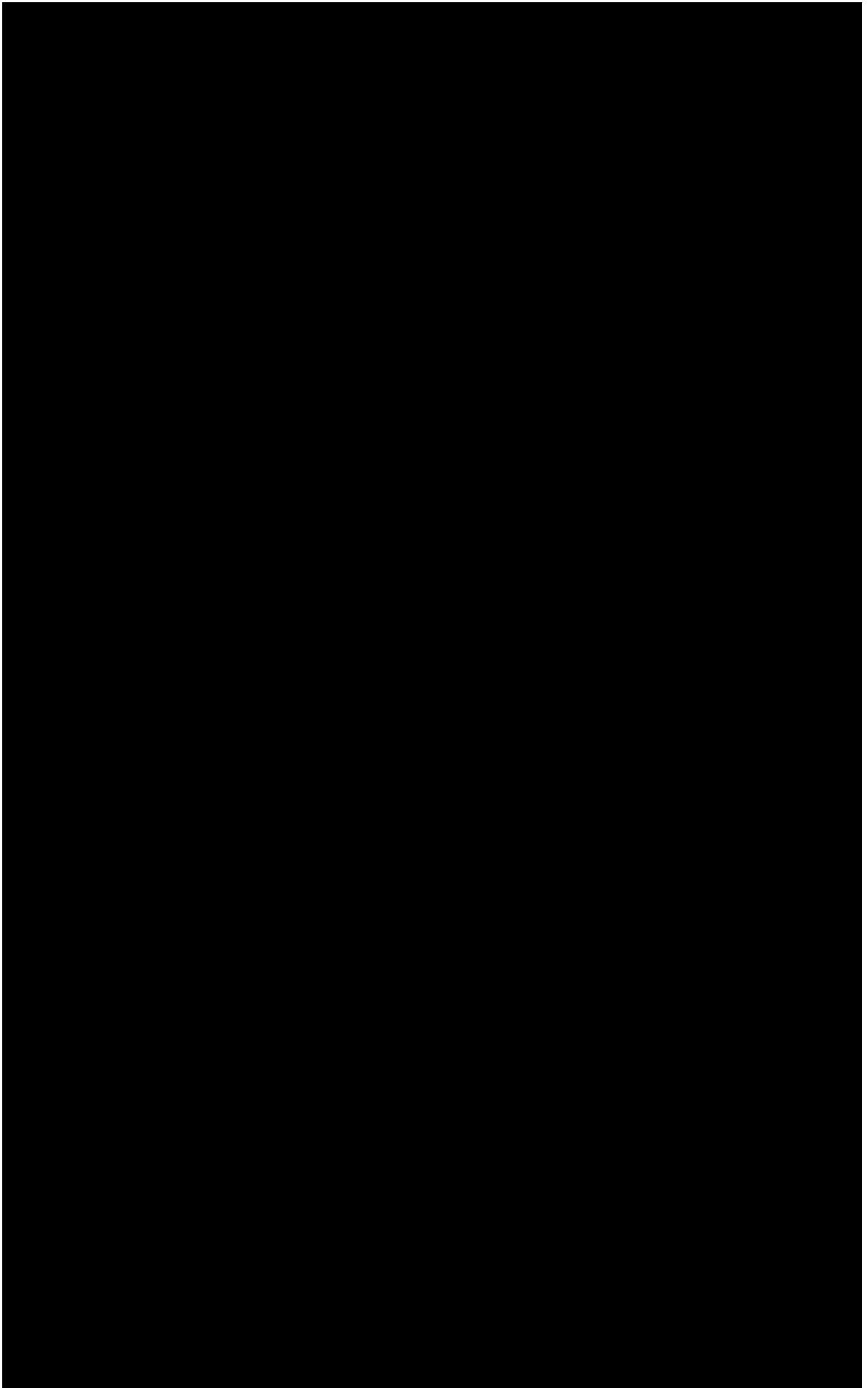
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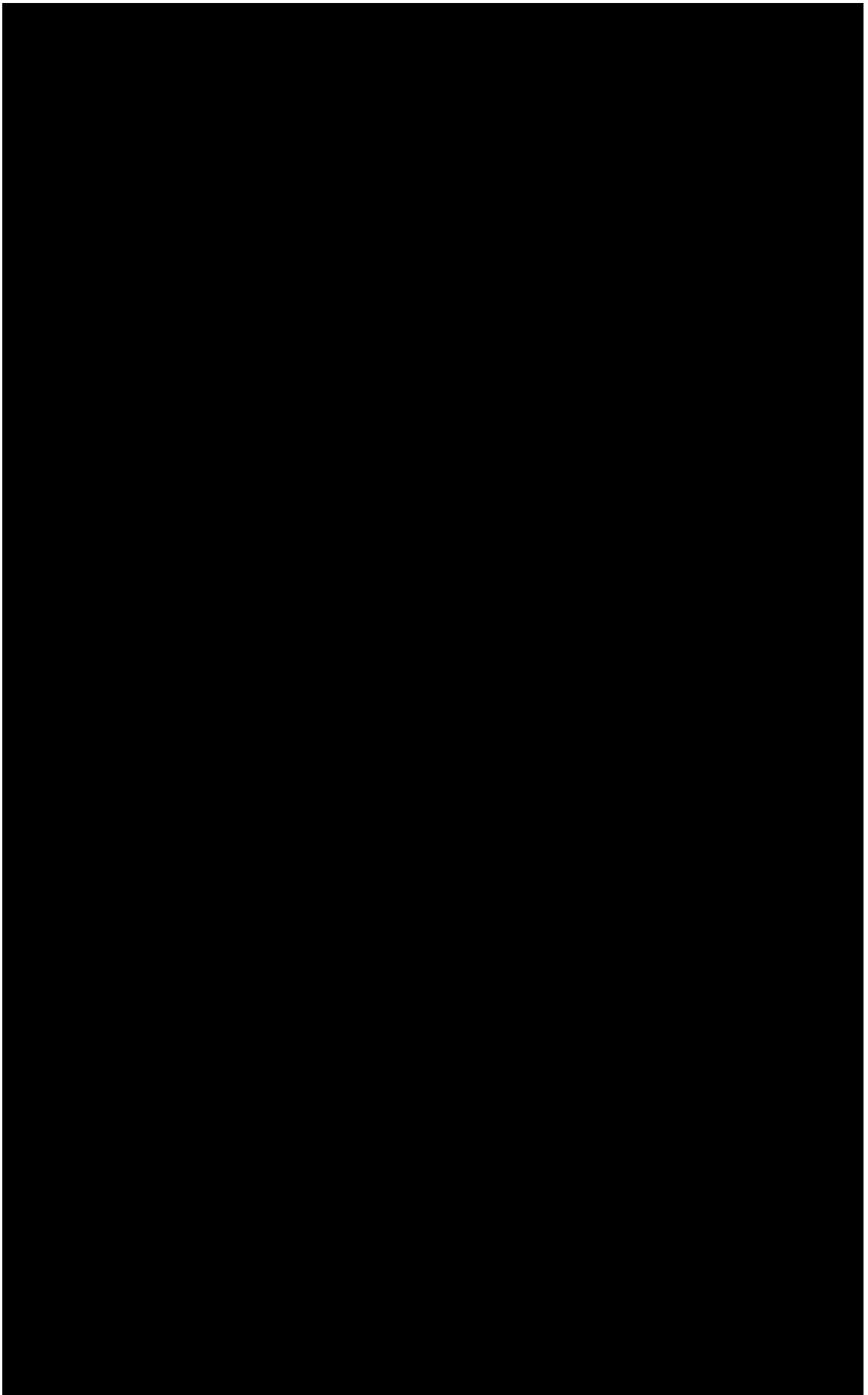
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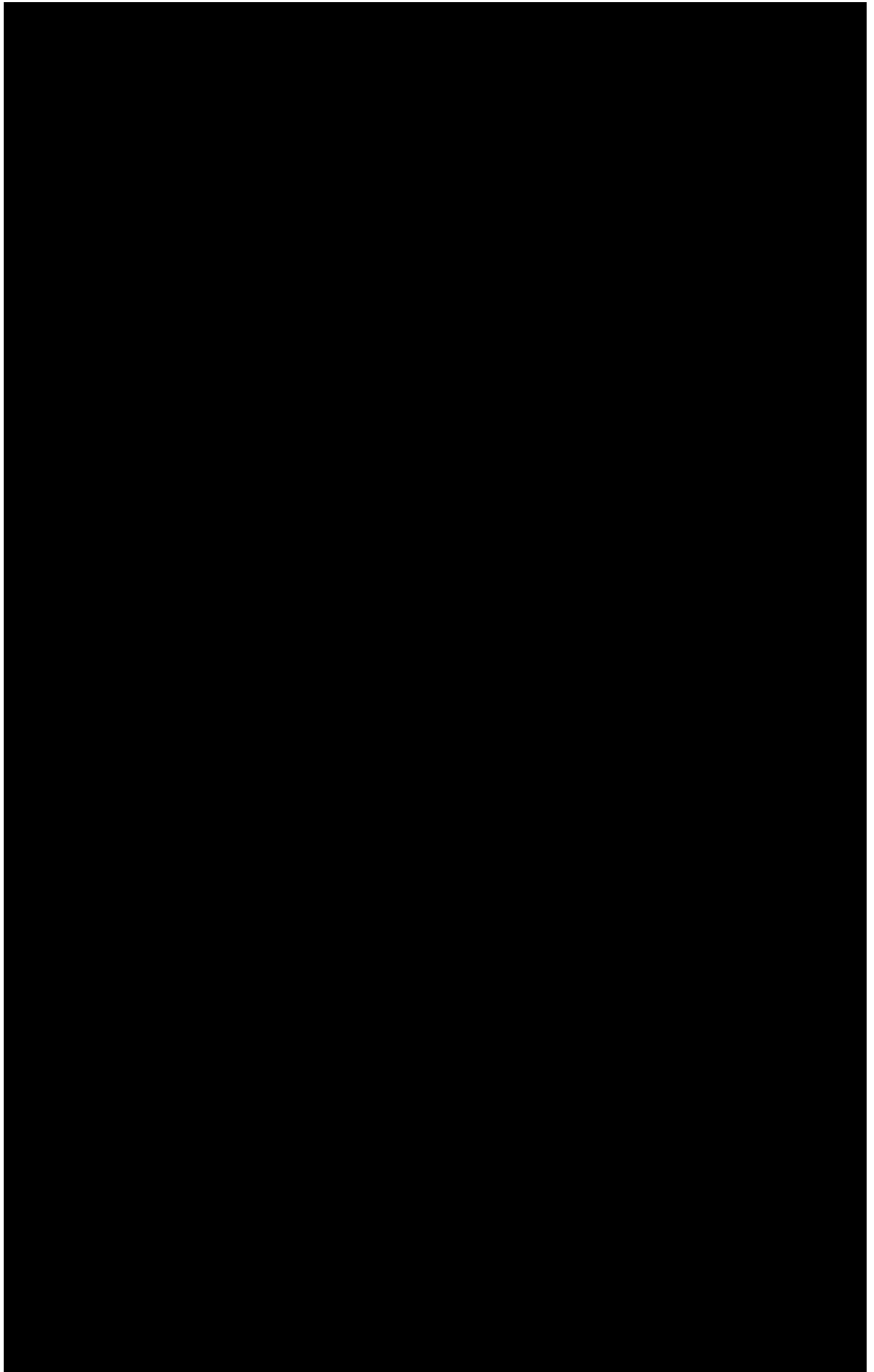
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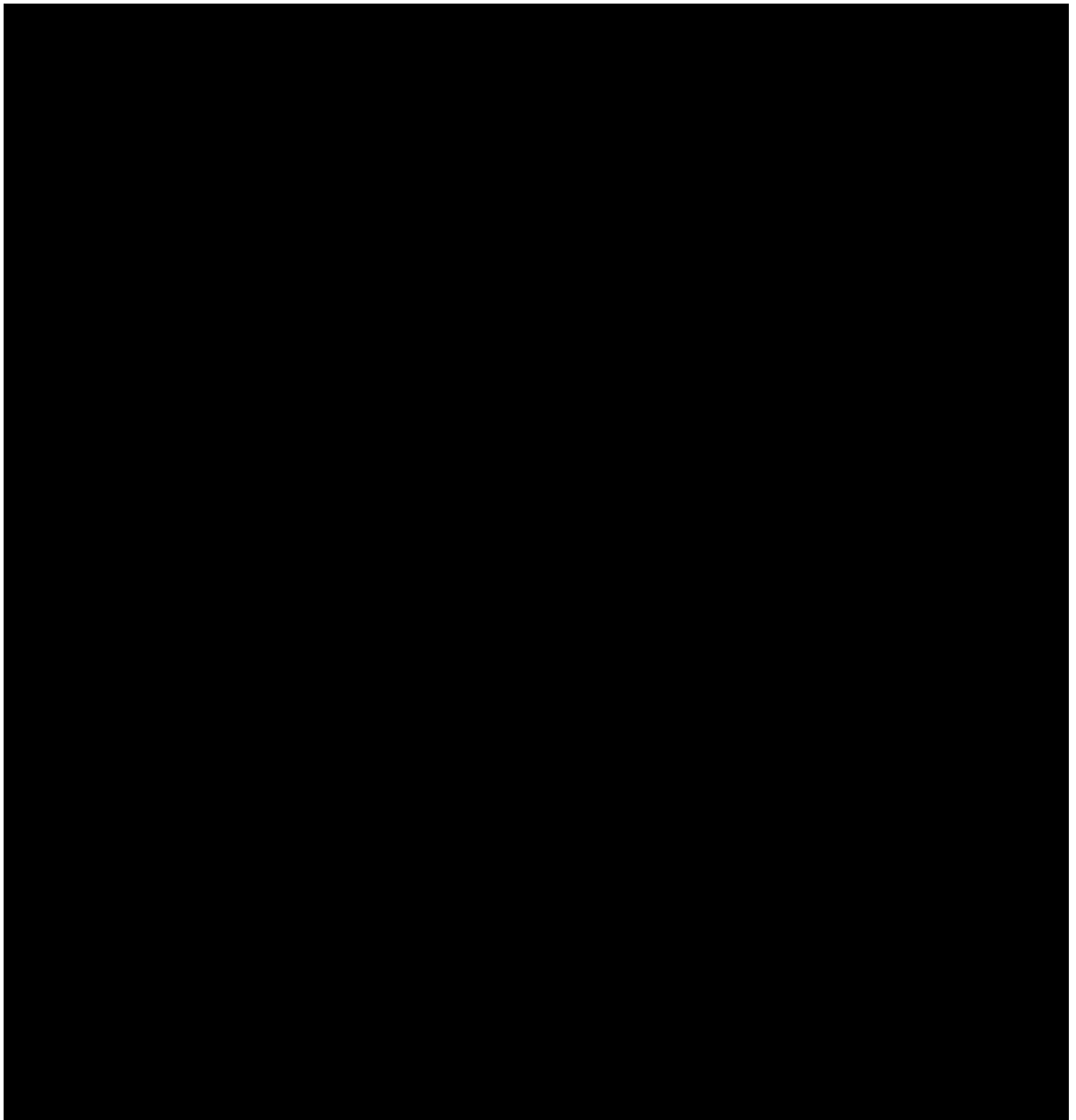
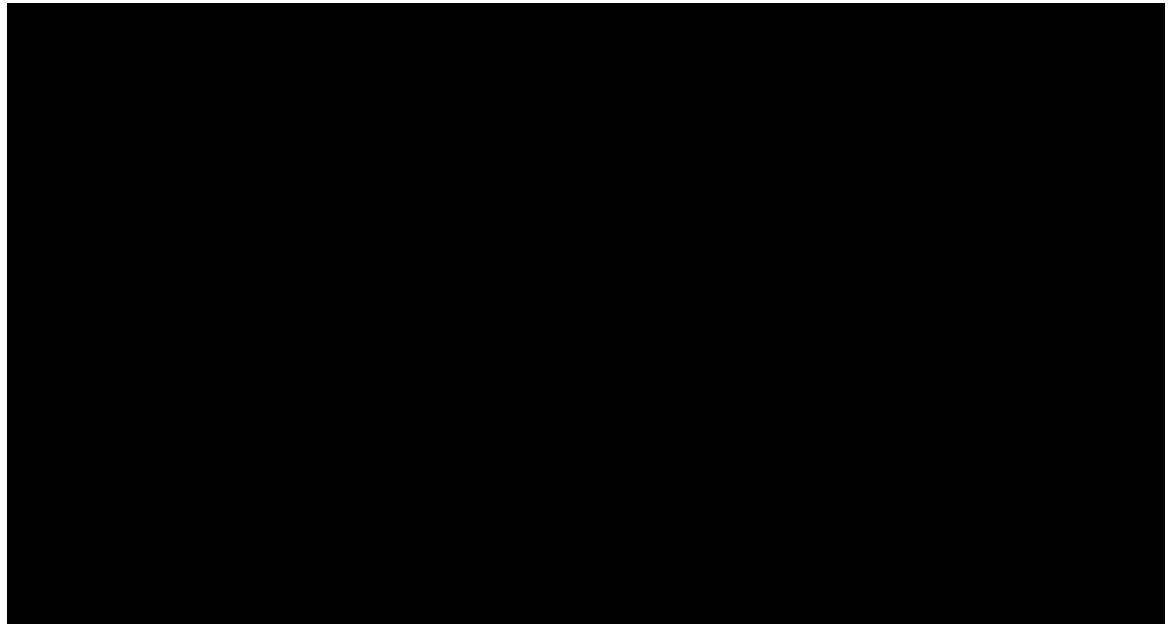
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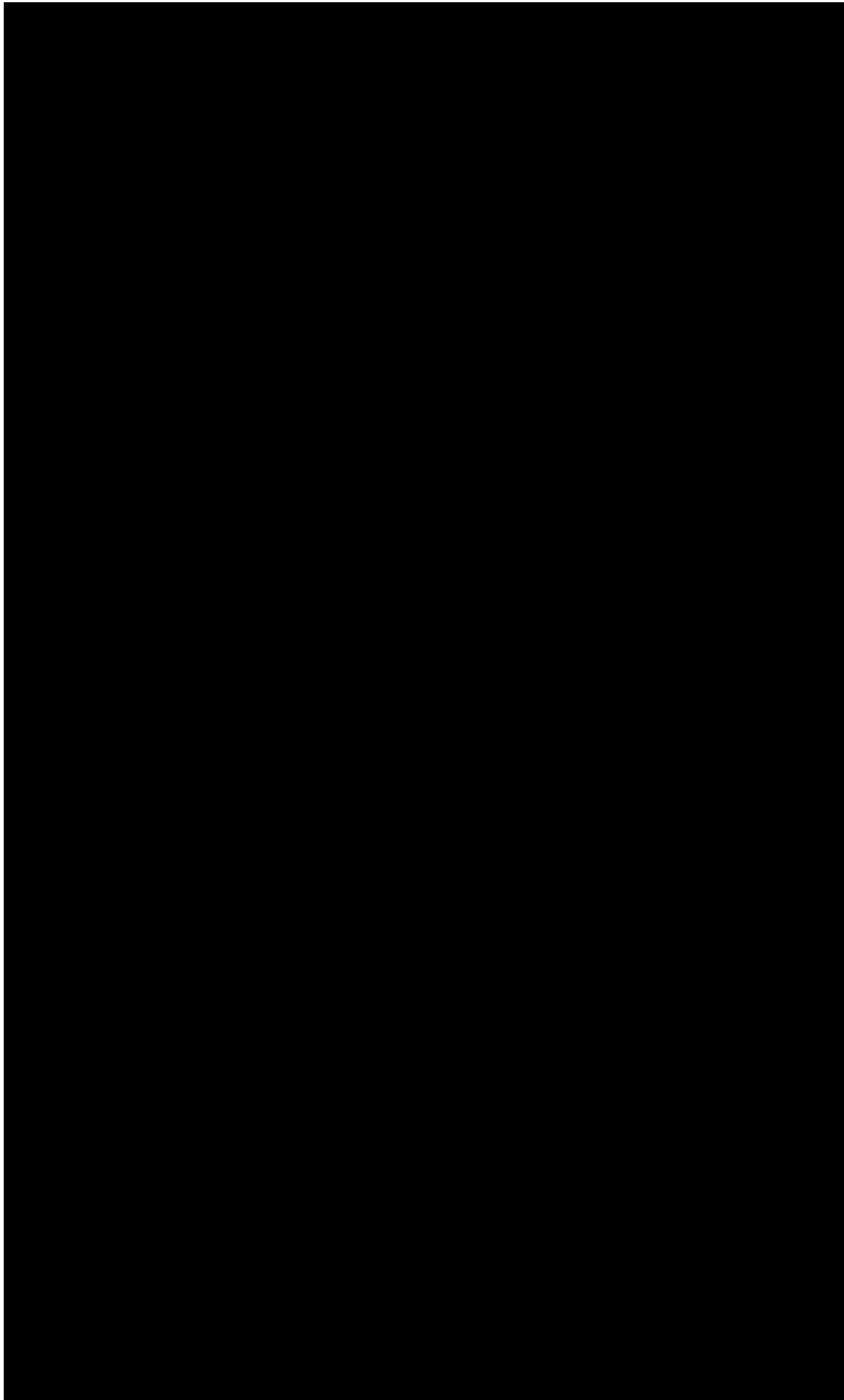
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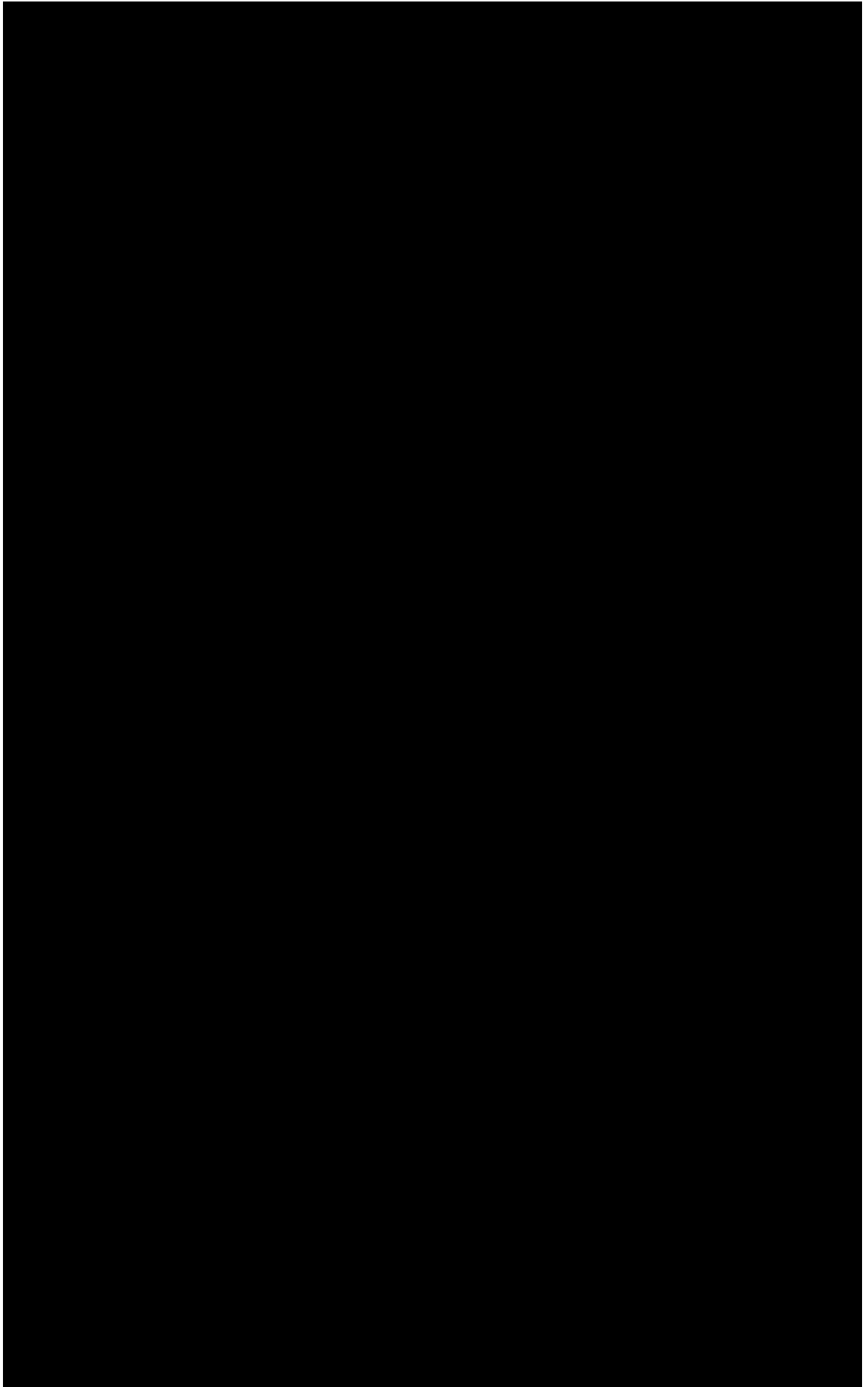
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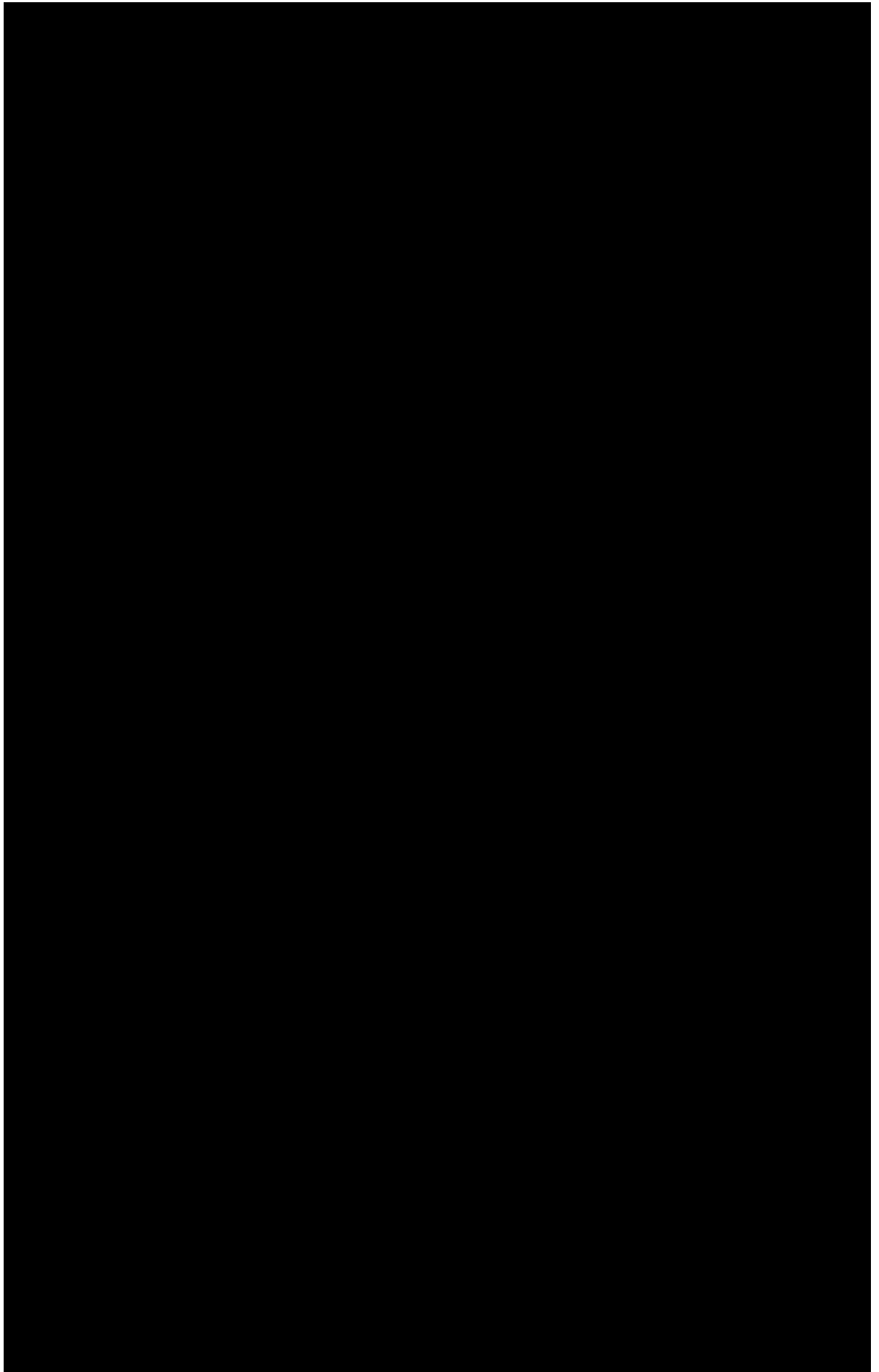
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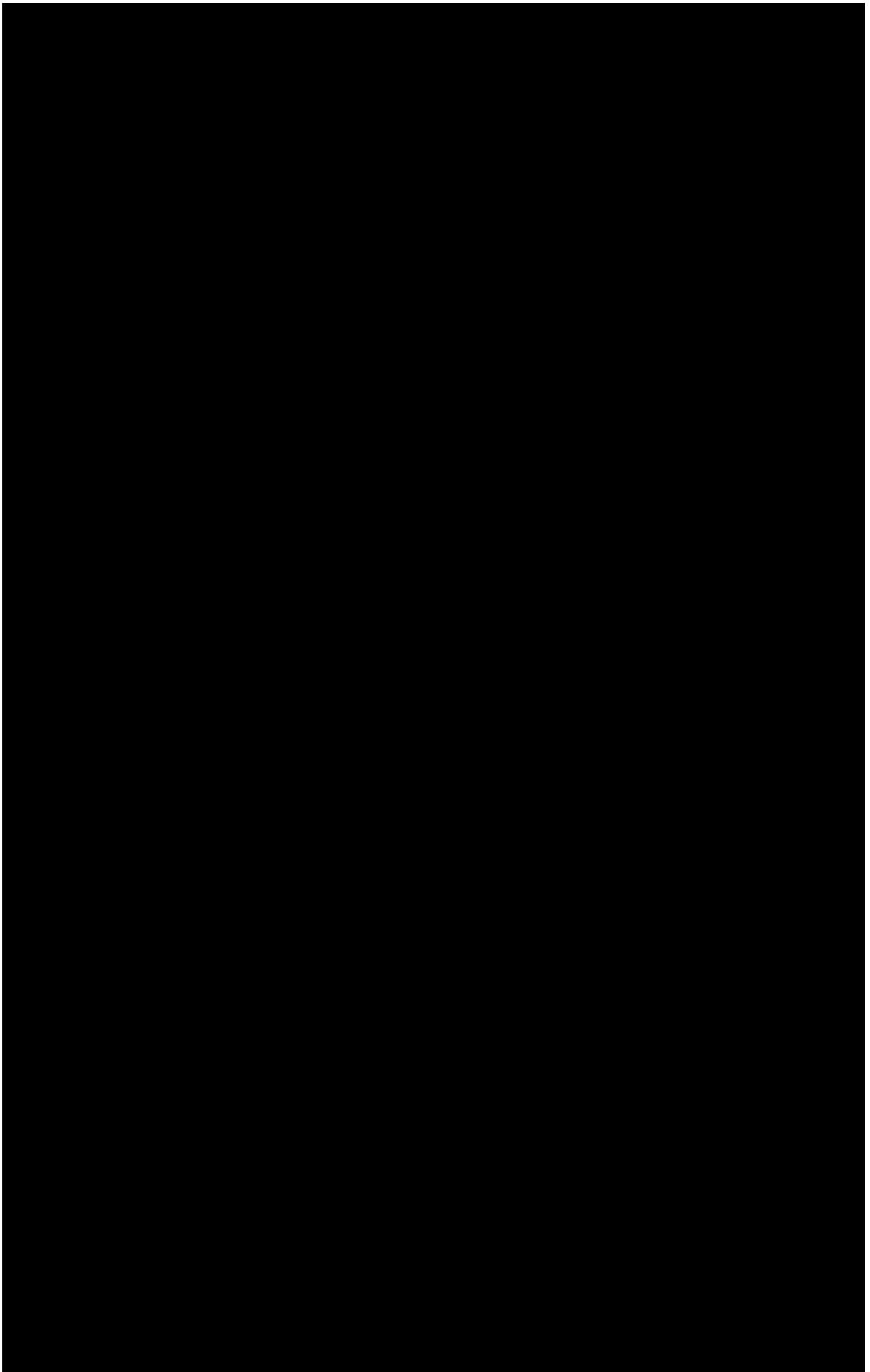
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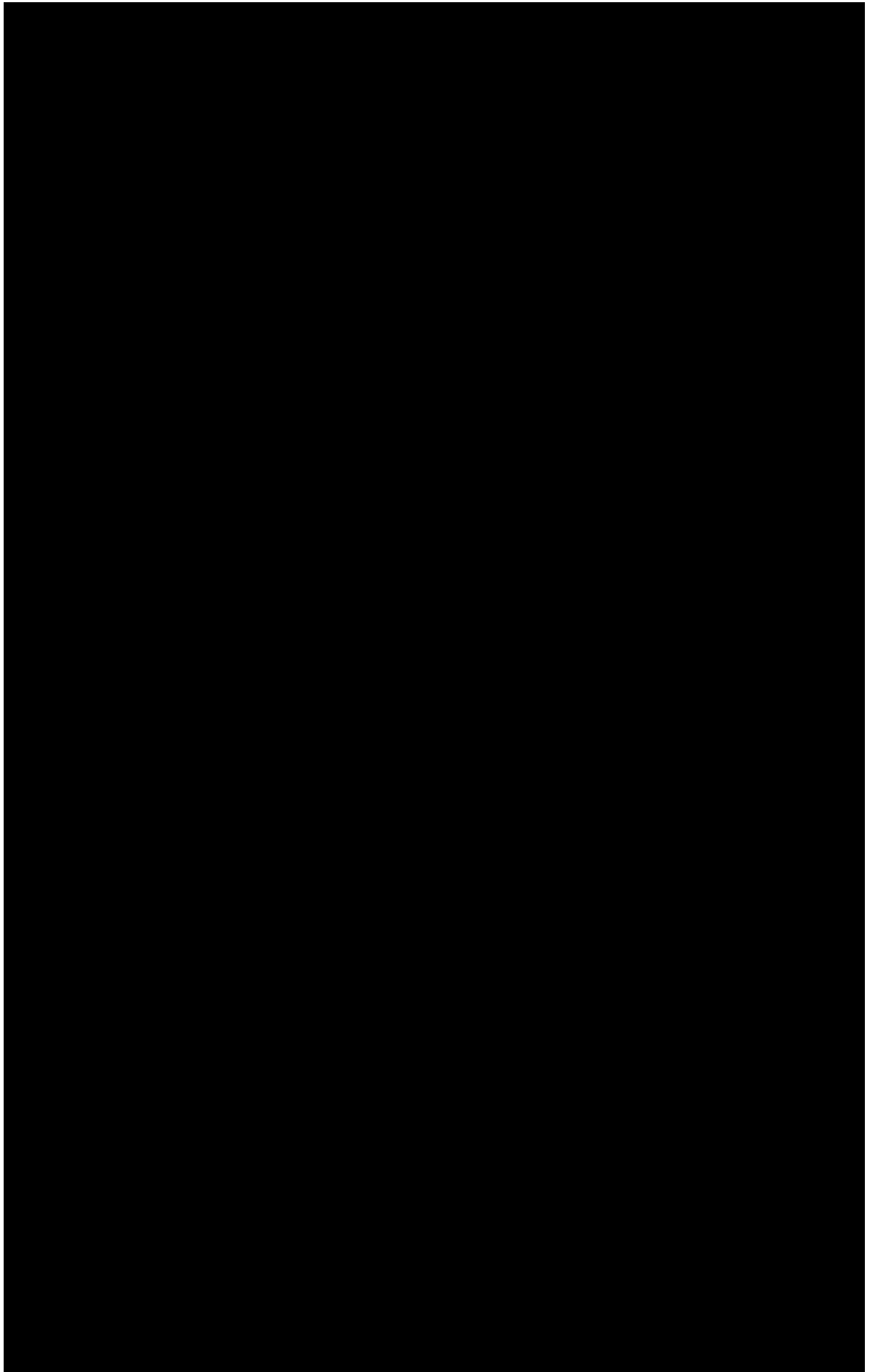
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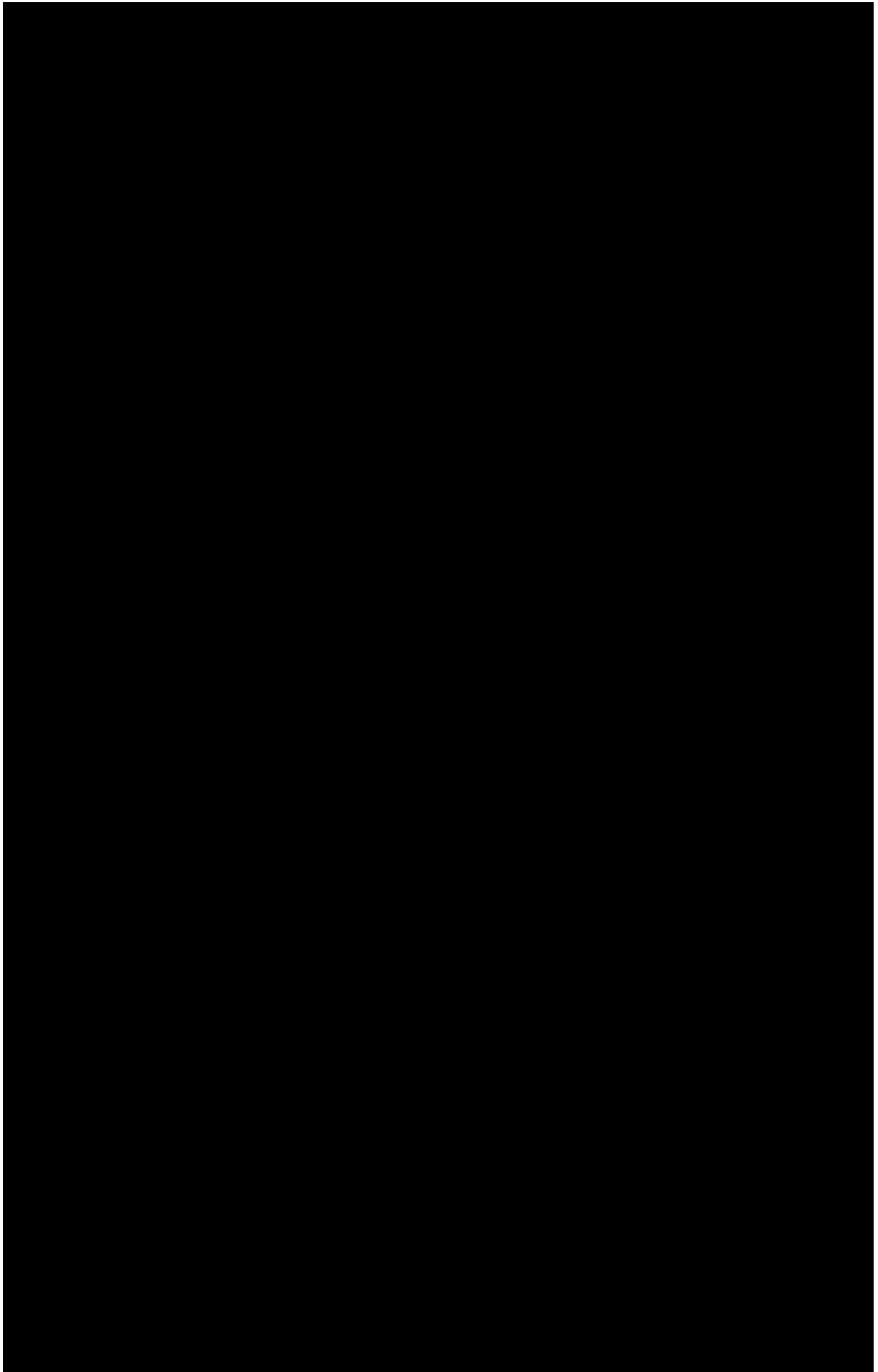
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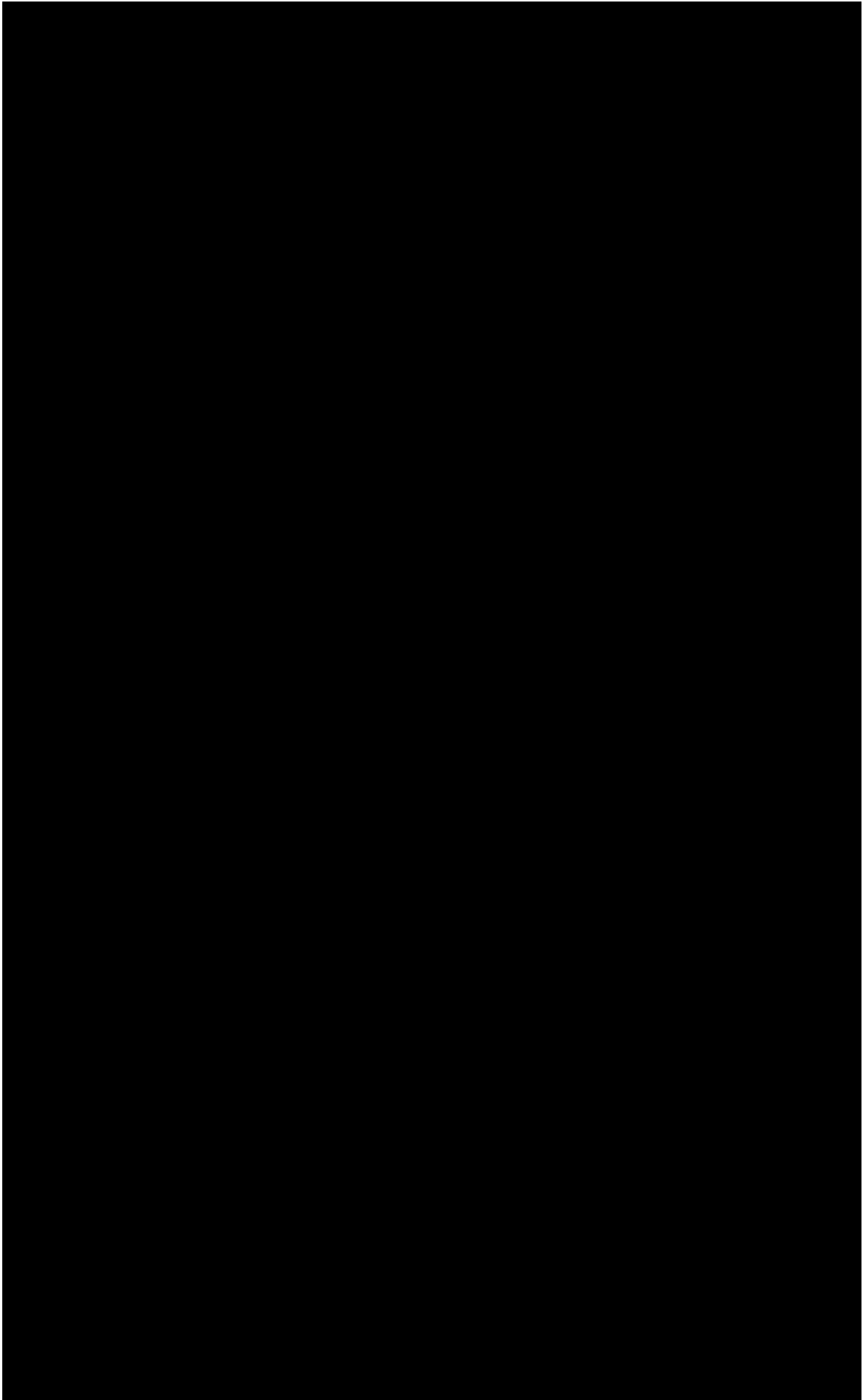
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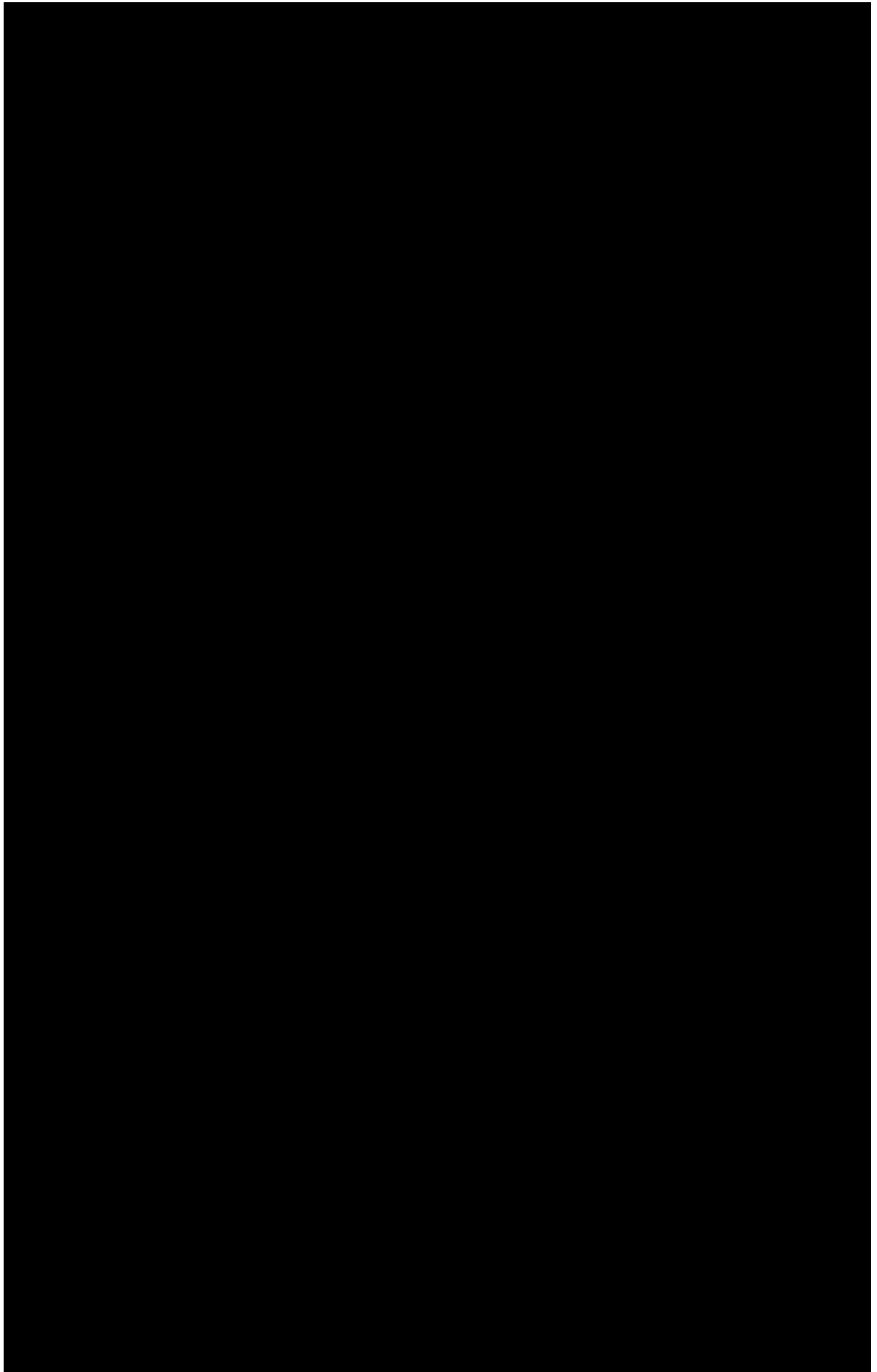
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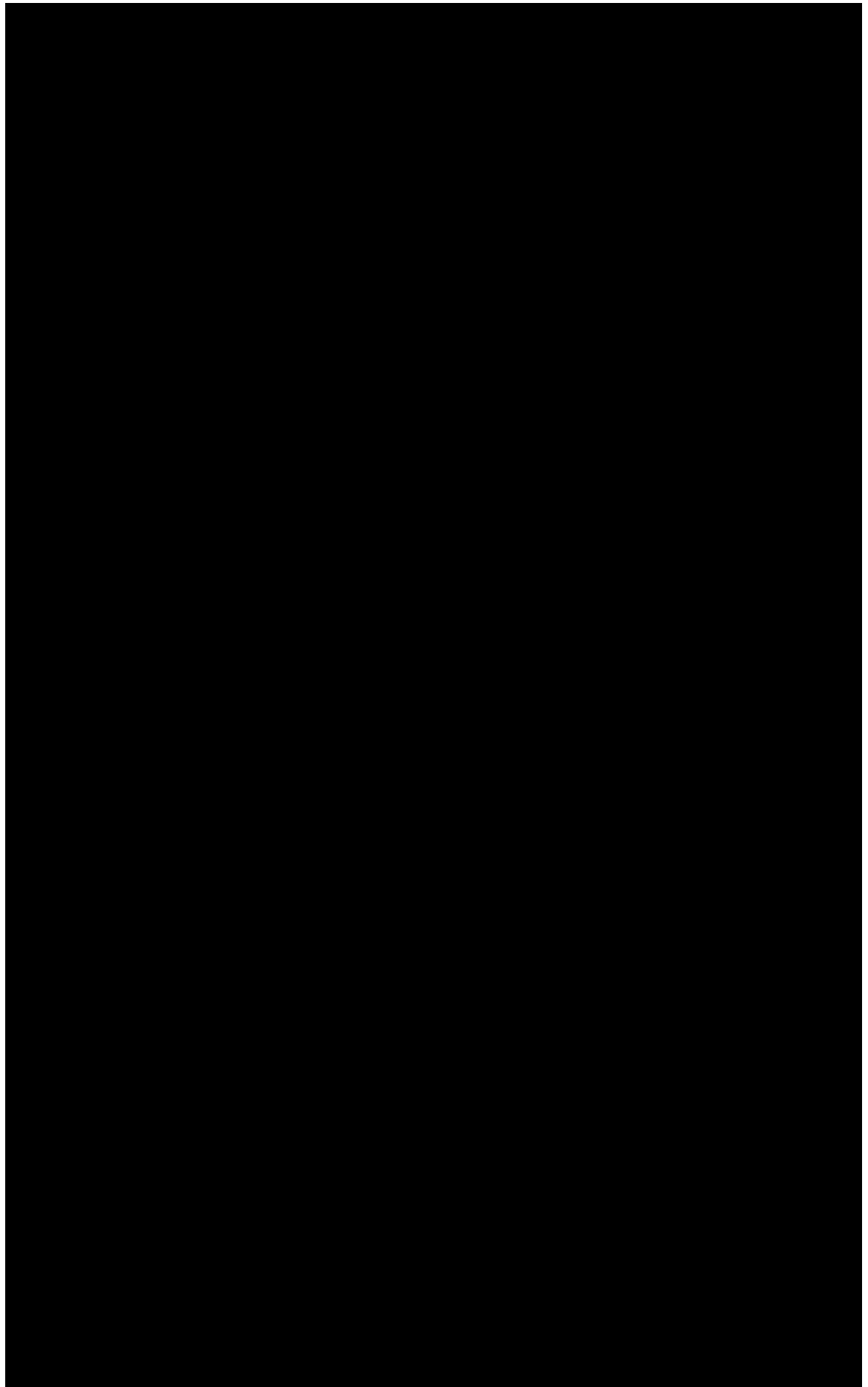
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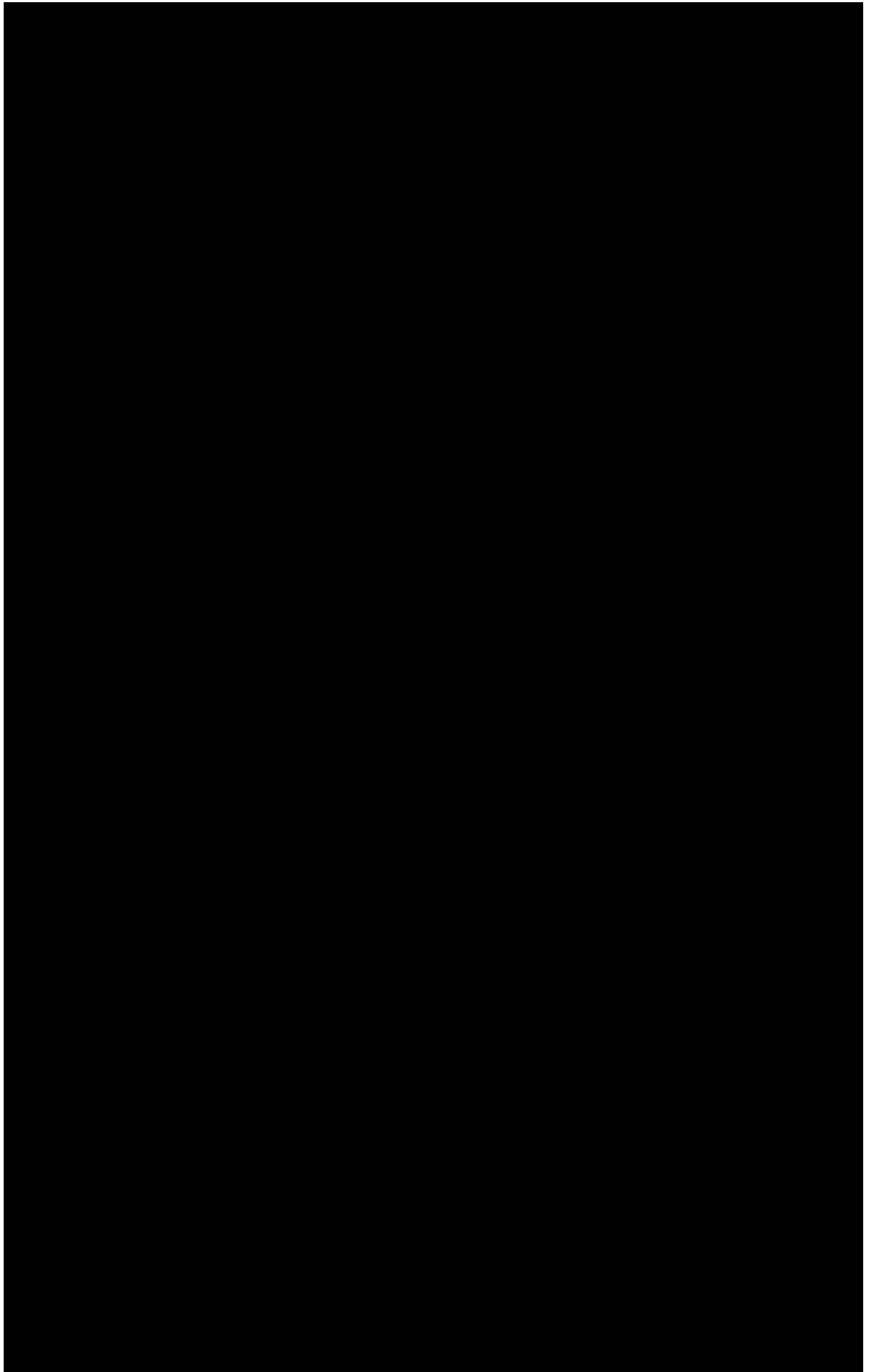
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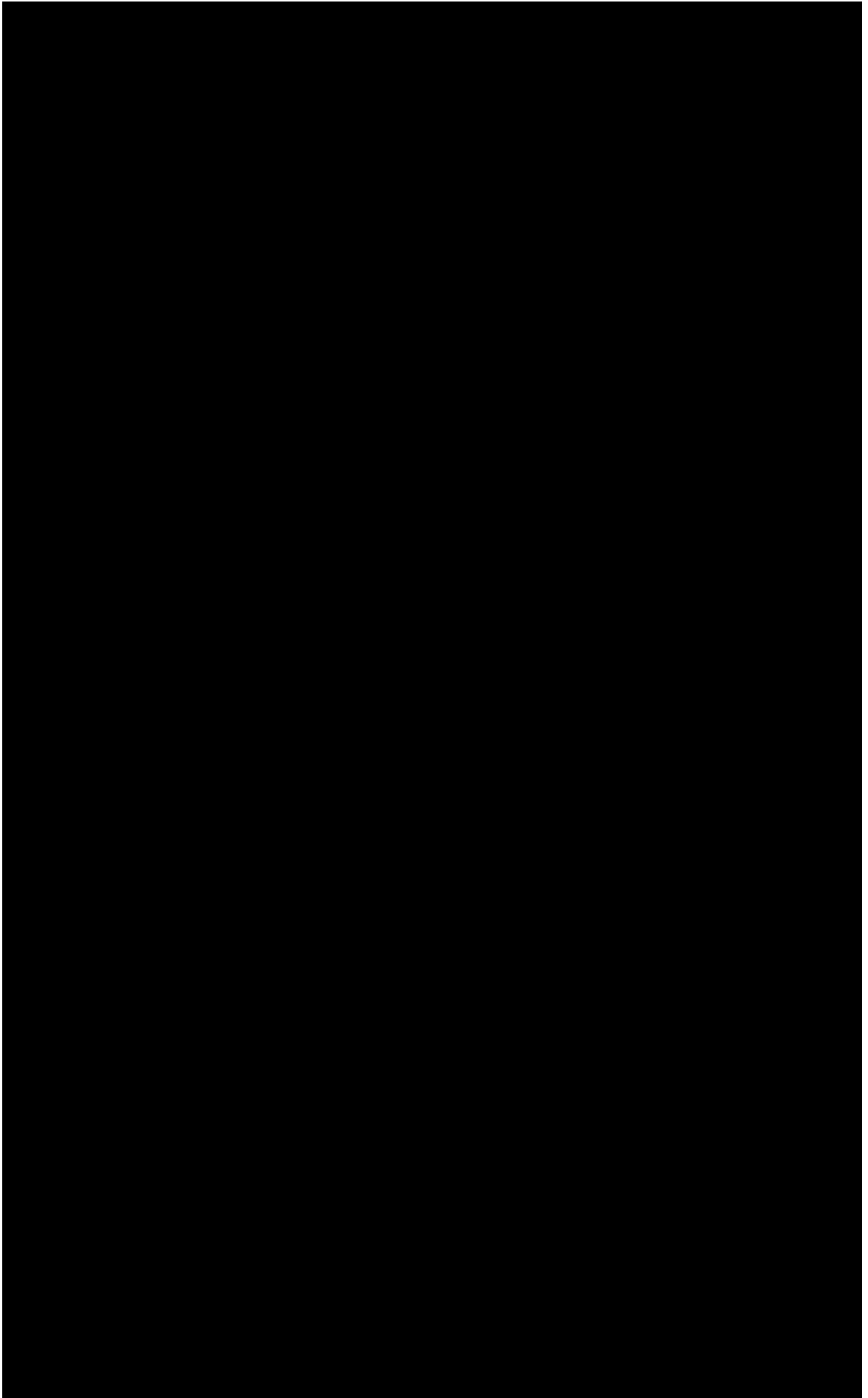
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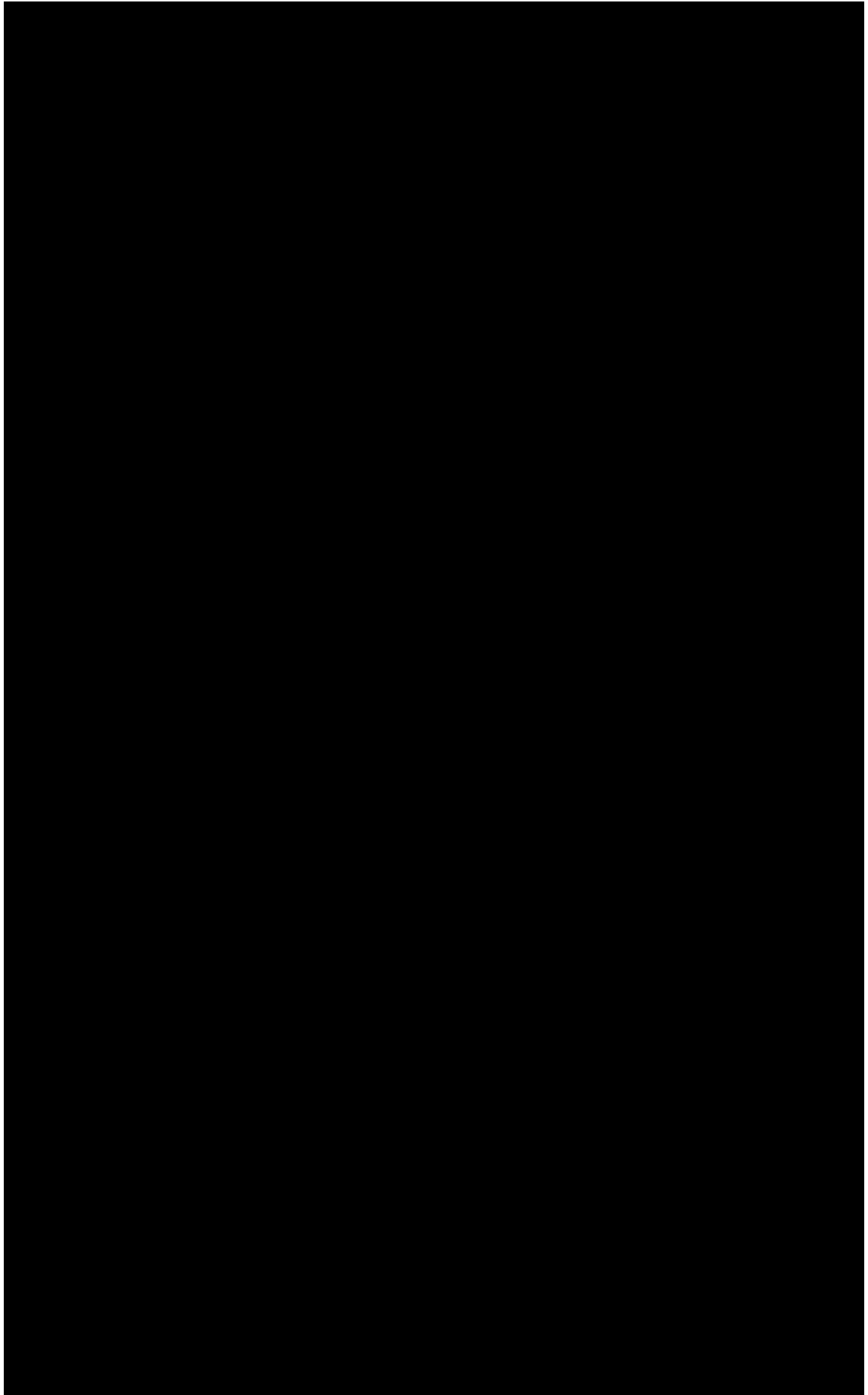
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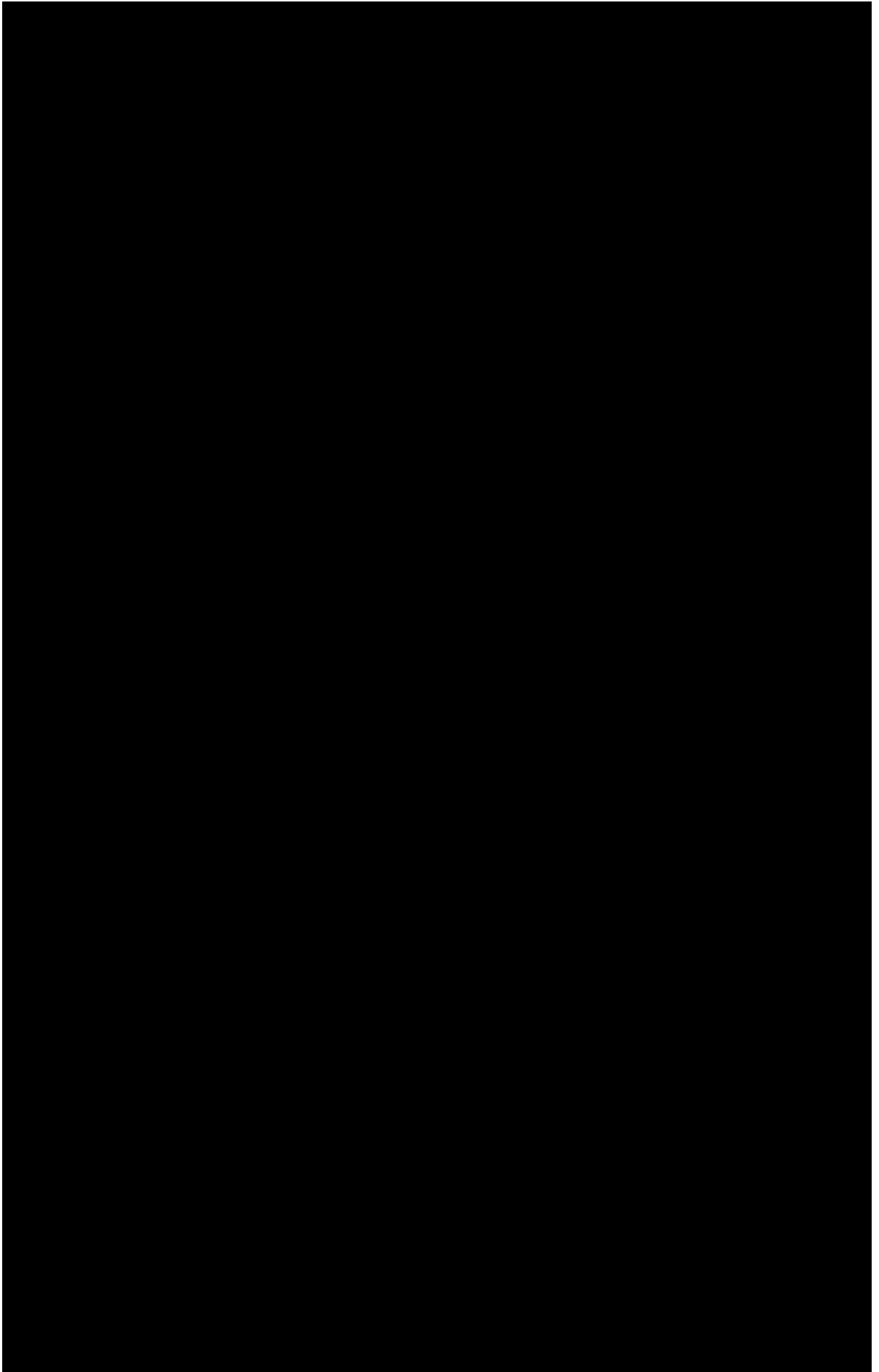
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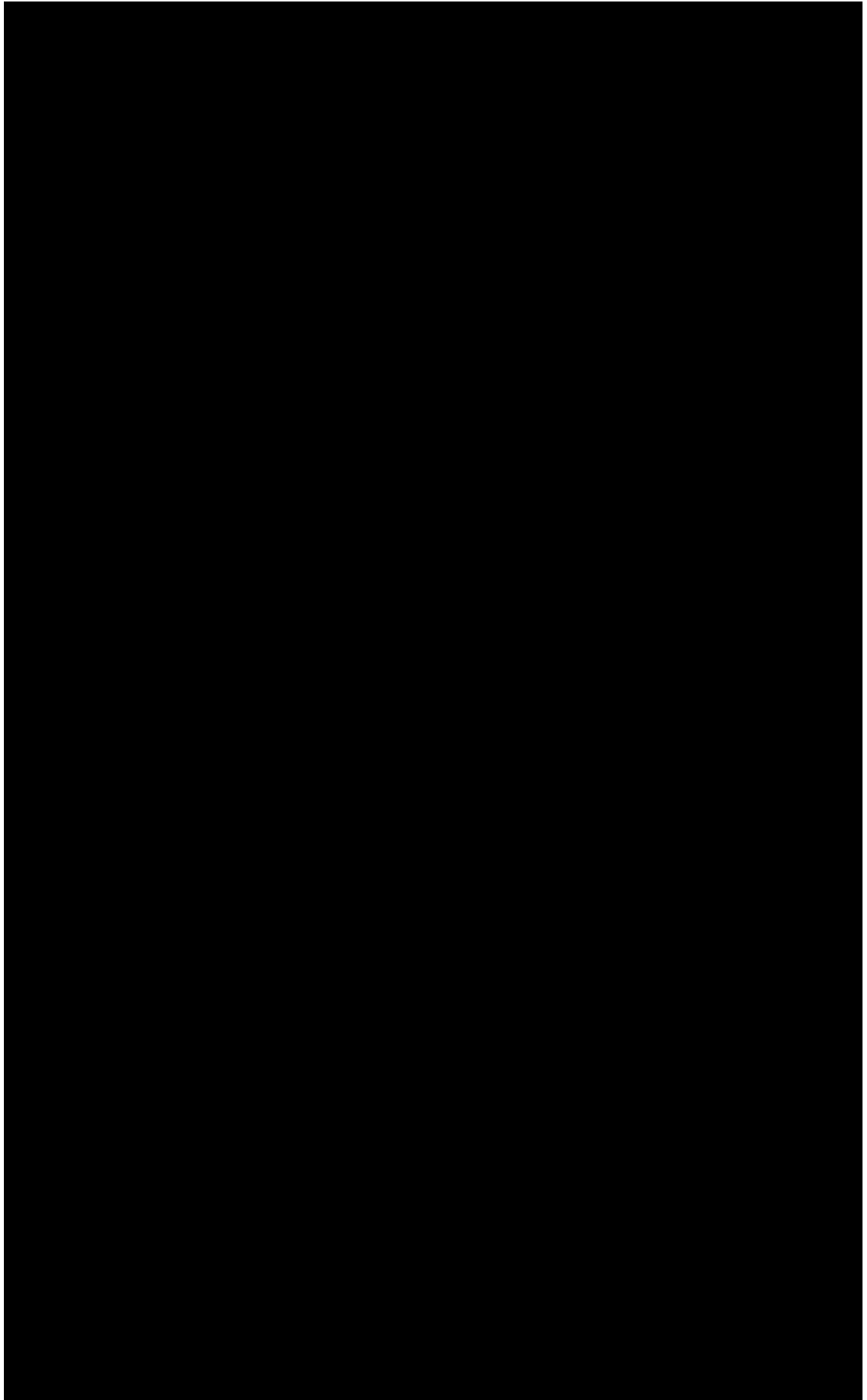
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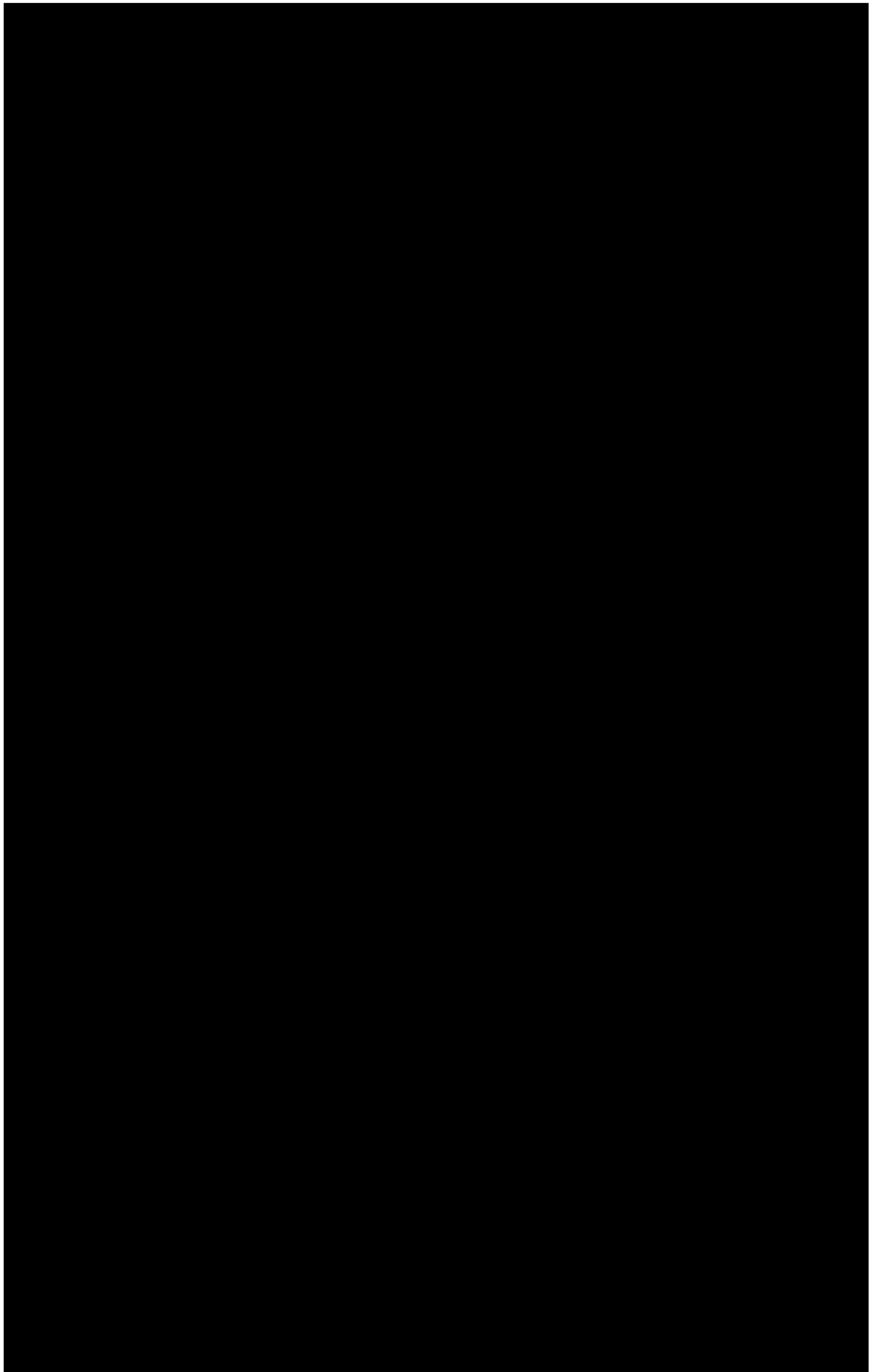
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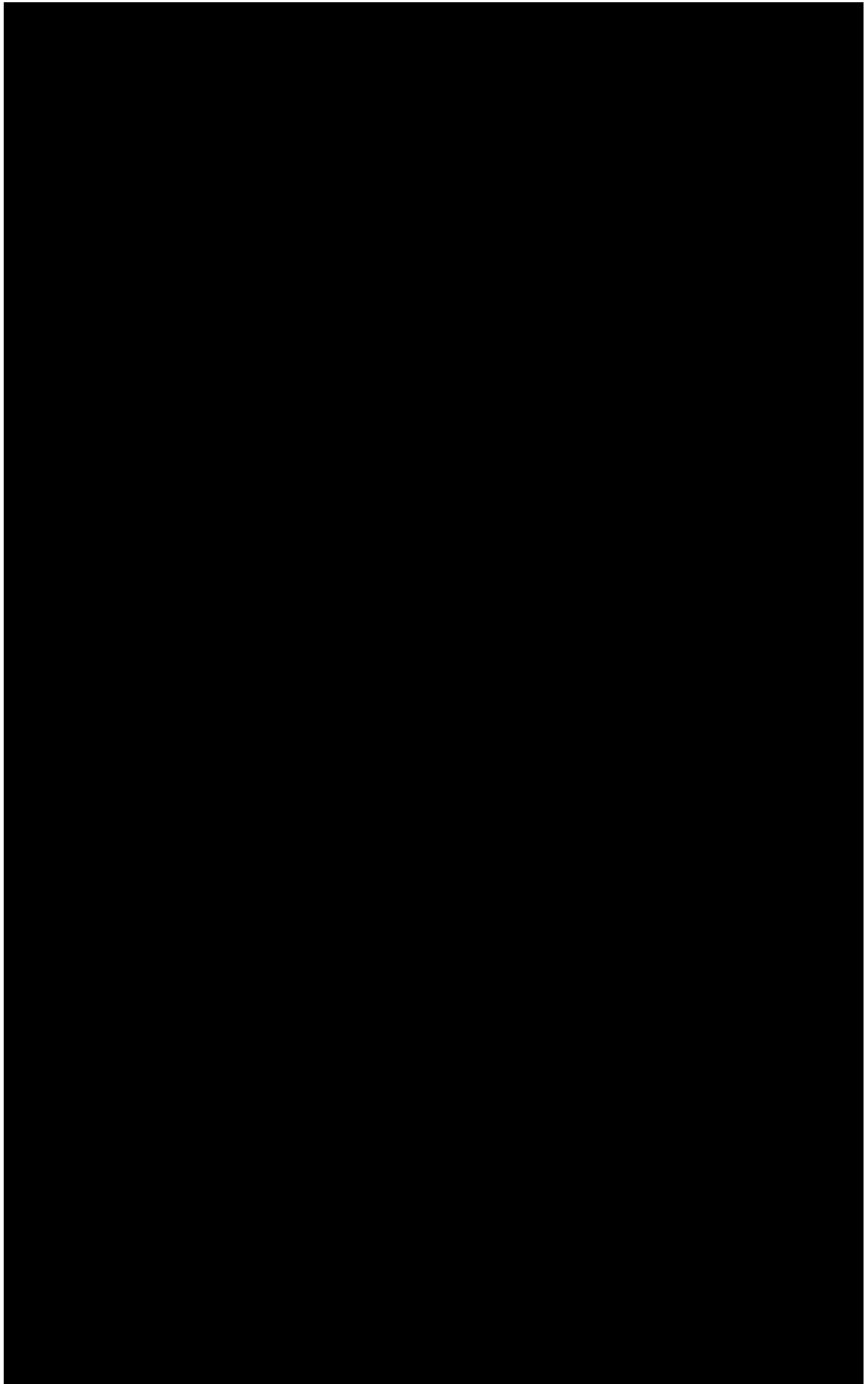
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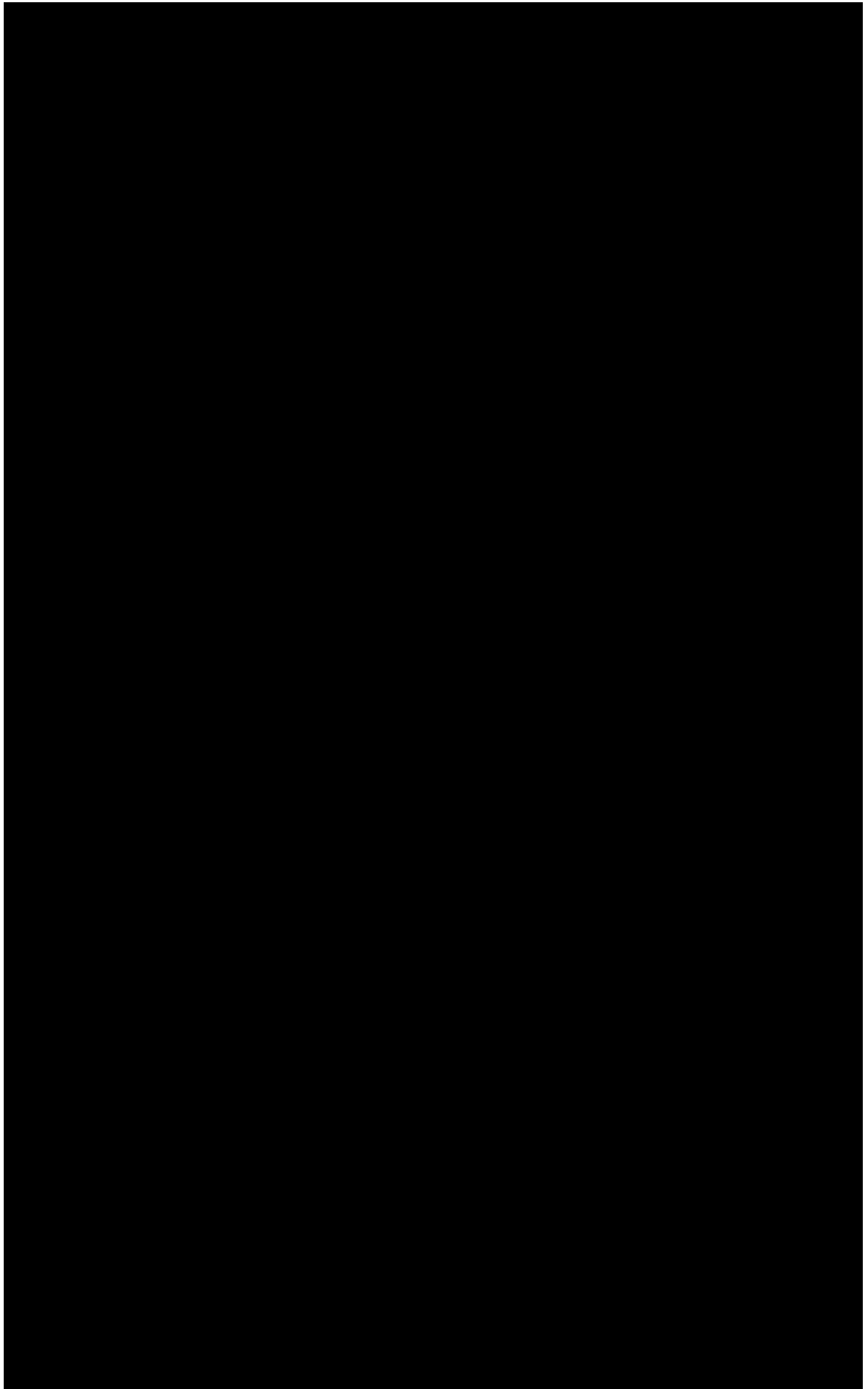
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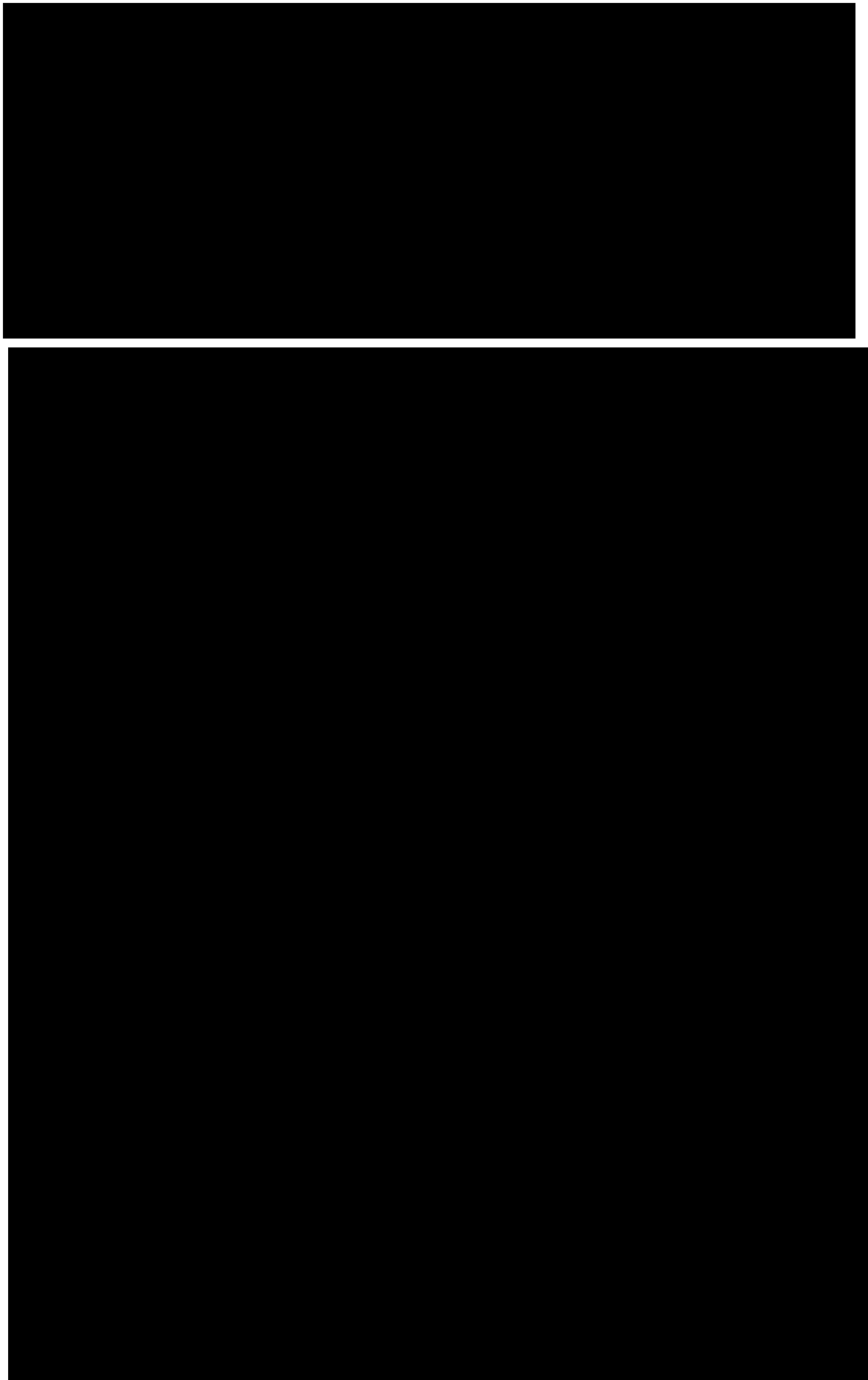
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18 BY MR. ELSNER:

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Hydrocodone is a Schedule II --

23

Schedule III narcotic at this point in time,

24

correct?

1 A. Correct.

2 Q. And it was later rescheduled --

3 MR. HYNES: Combination.

4 BY MR. ELSNER:

5 Q. Combination. And it was later  
6 rescheduled to Schedule II, correct?

7 A. Yes.

8 Q. Okay. And part of the reason for that,  
9 it's highly addictive. Would you agree with that?

10 A. I don't know the -- I'm not a chemist.  
11 I'm not a biologist. I'm not a pharmacist. I  
12 can't speak to the addictive qualities or -- of the  
13 drugs, but...

14 So, would I agree with her or not? I  
15 can't -- I can't agree that it's a highly addictive  
16 drug. I've taken it once for a medical procedure.  
17 My wife has taken it for multiple procedures and we  
18 didn't become addicted. That's all I can tell you  
19 about hydrocodone.

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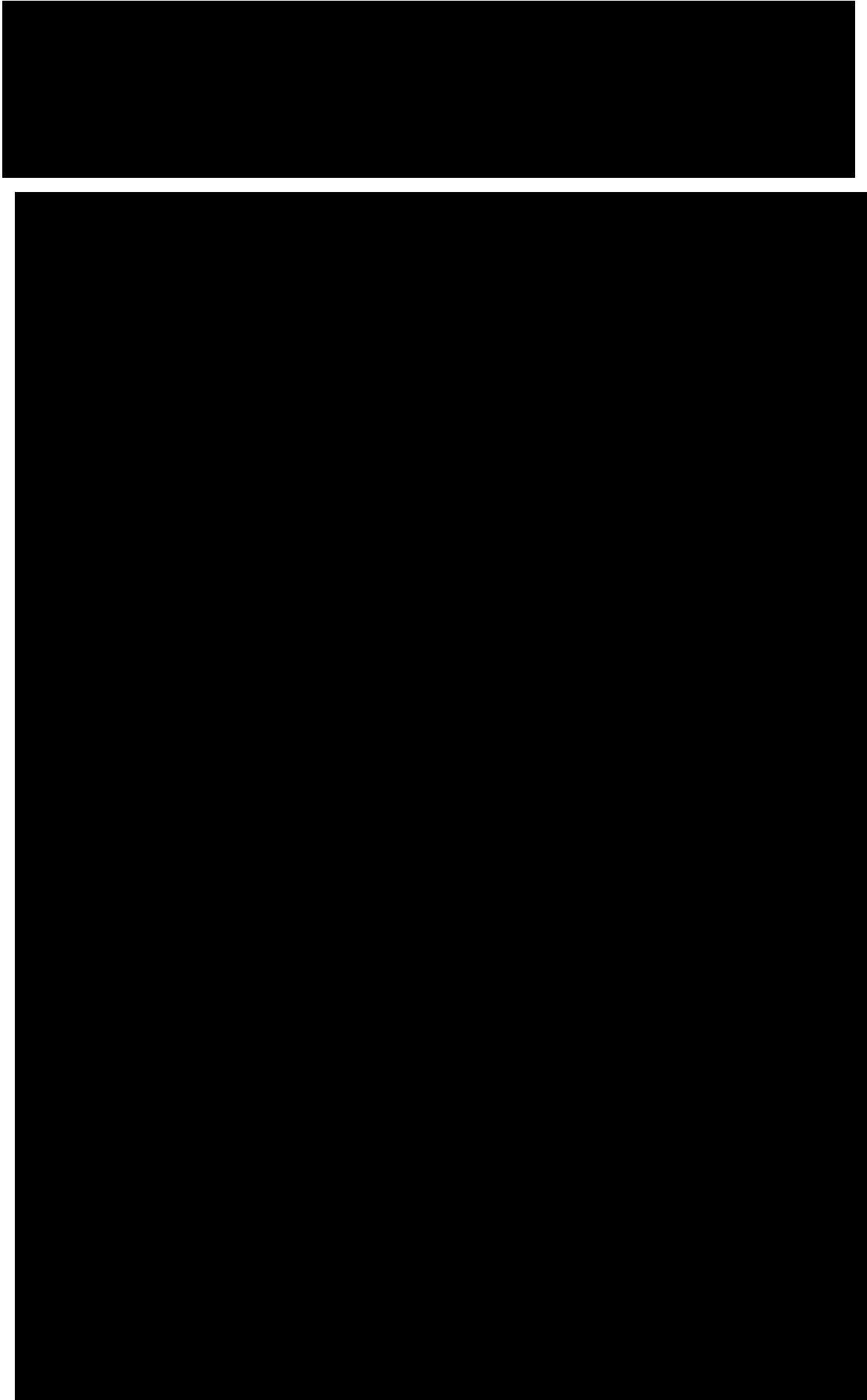
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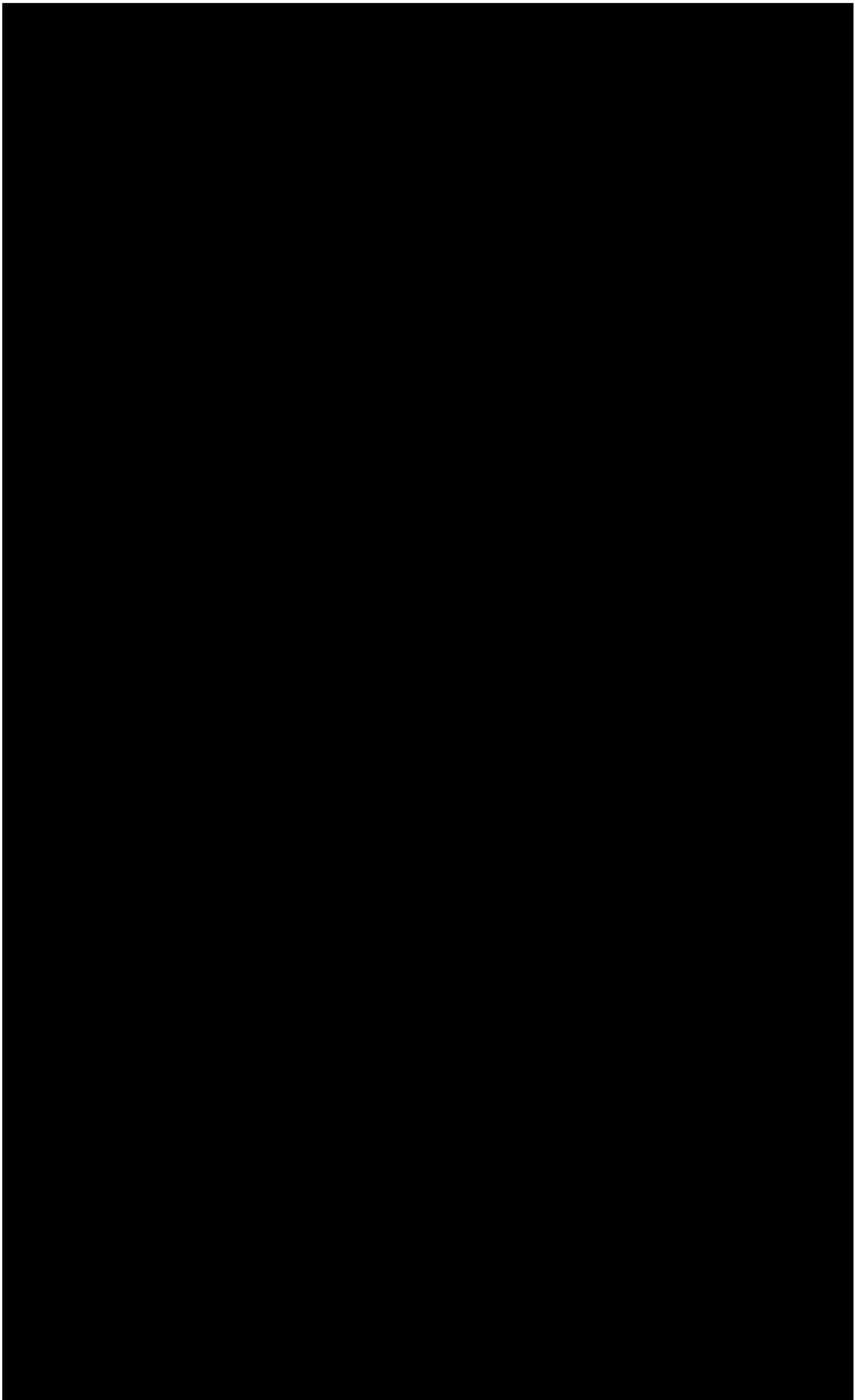
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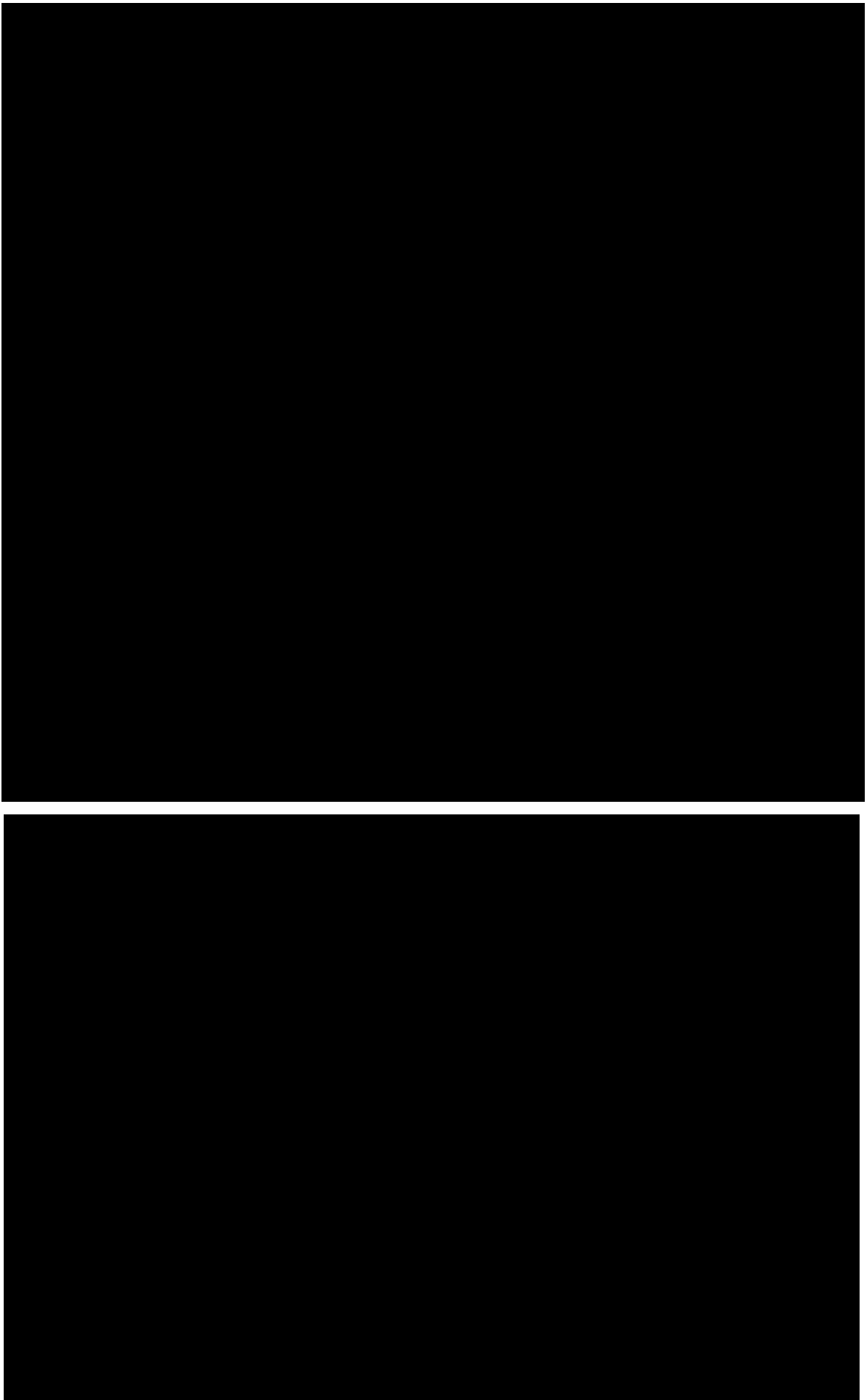
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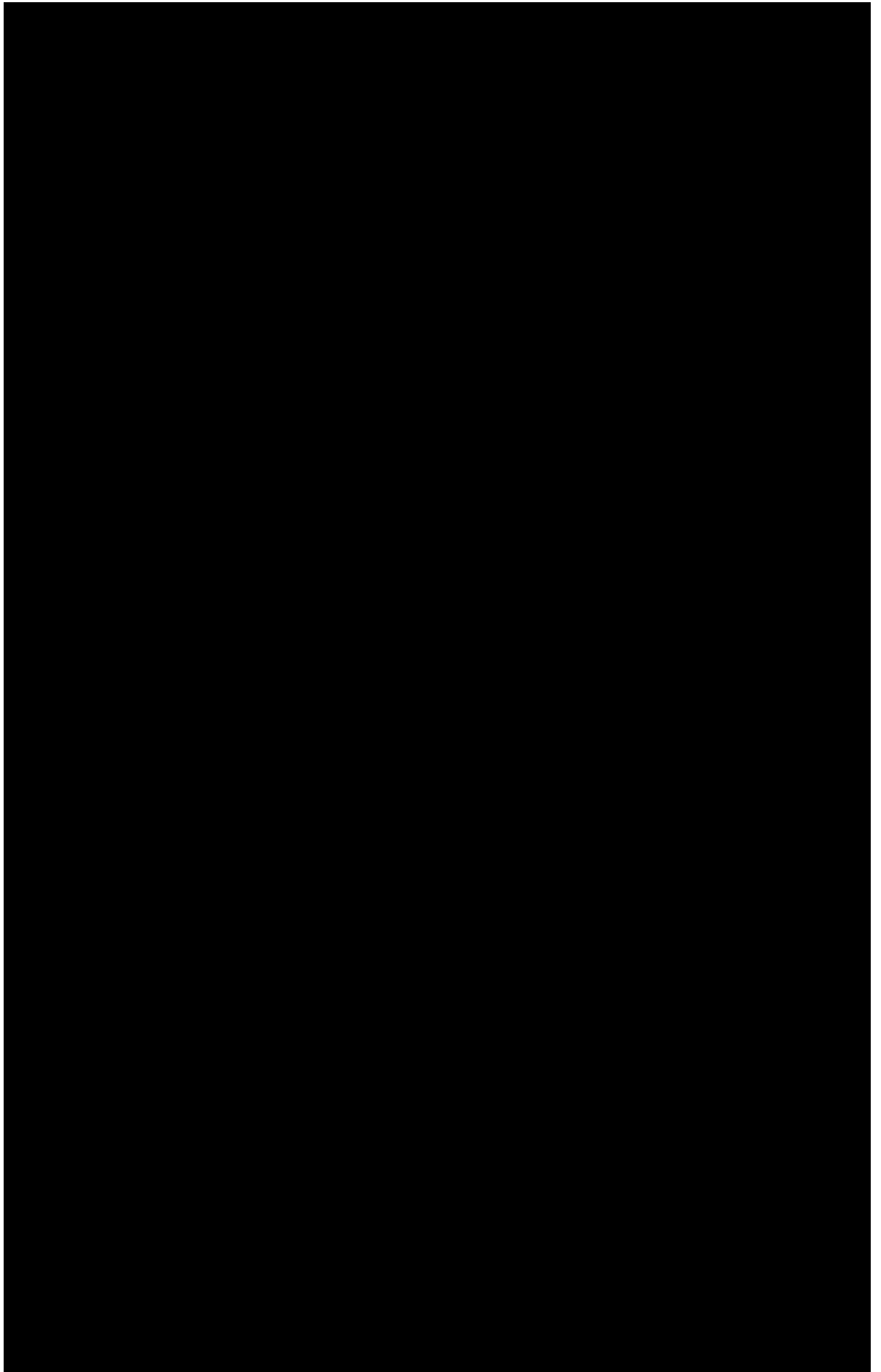
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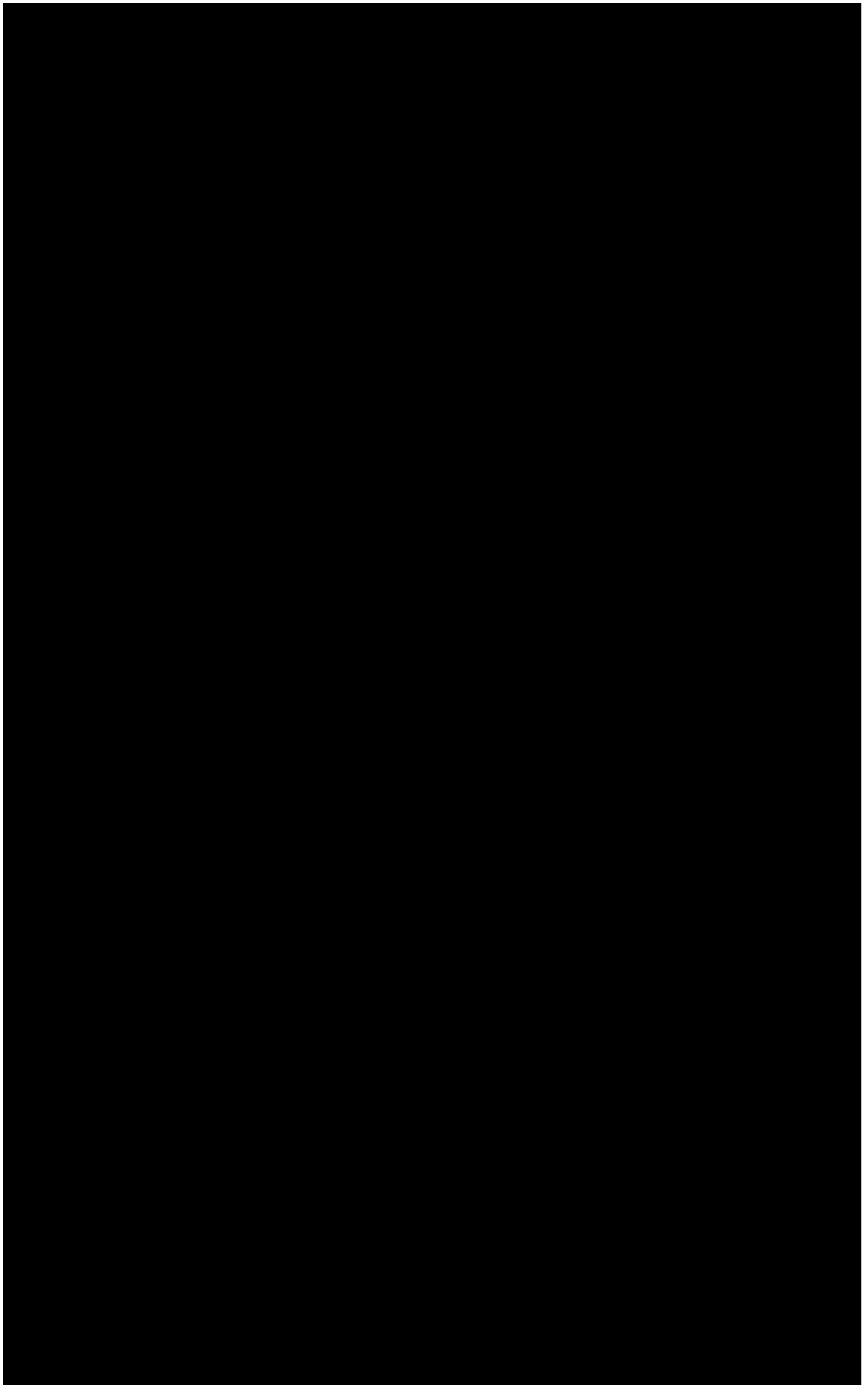
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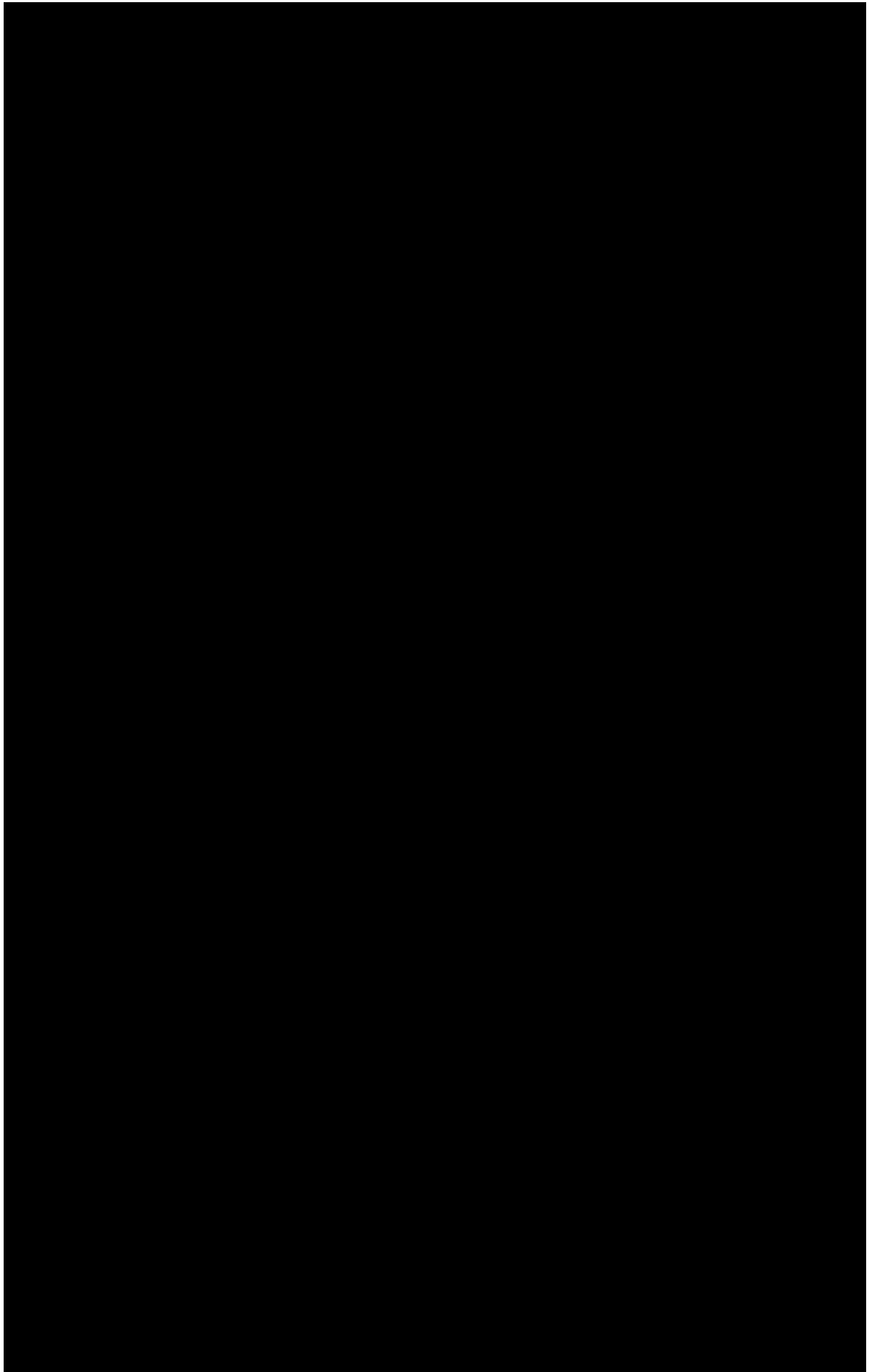
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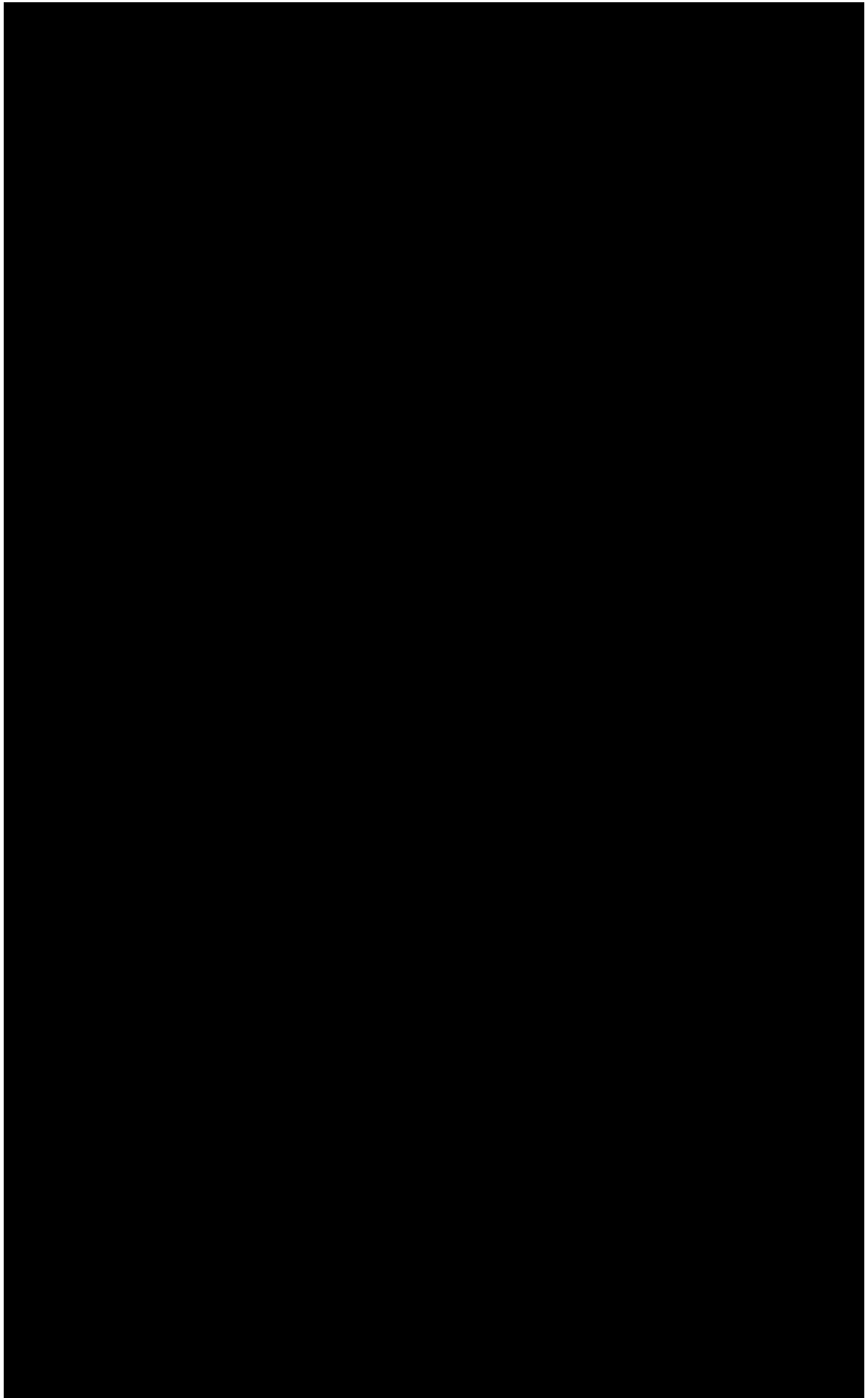
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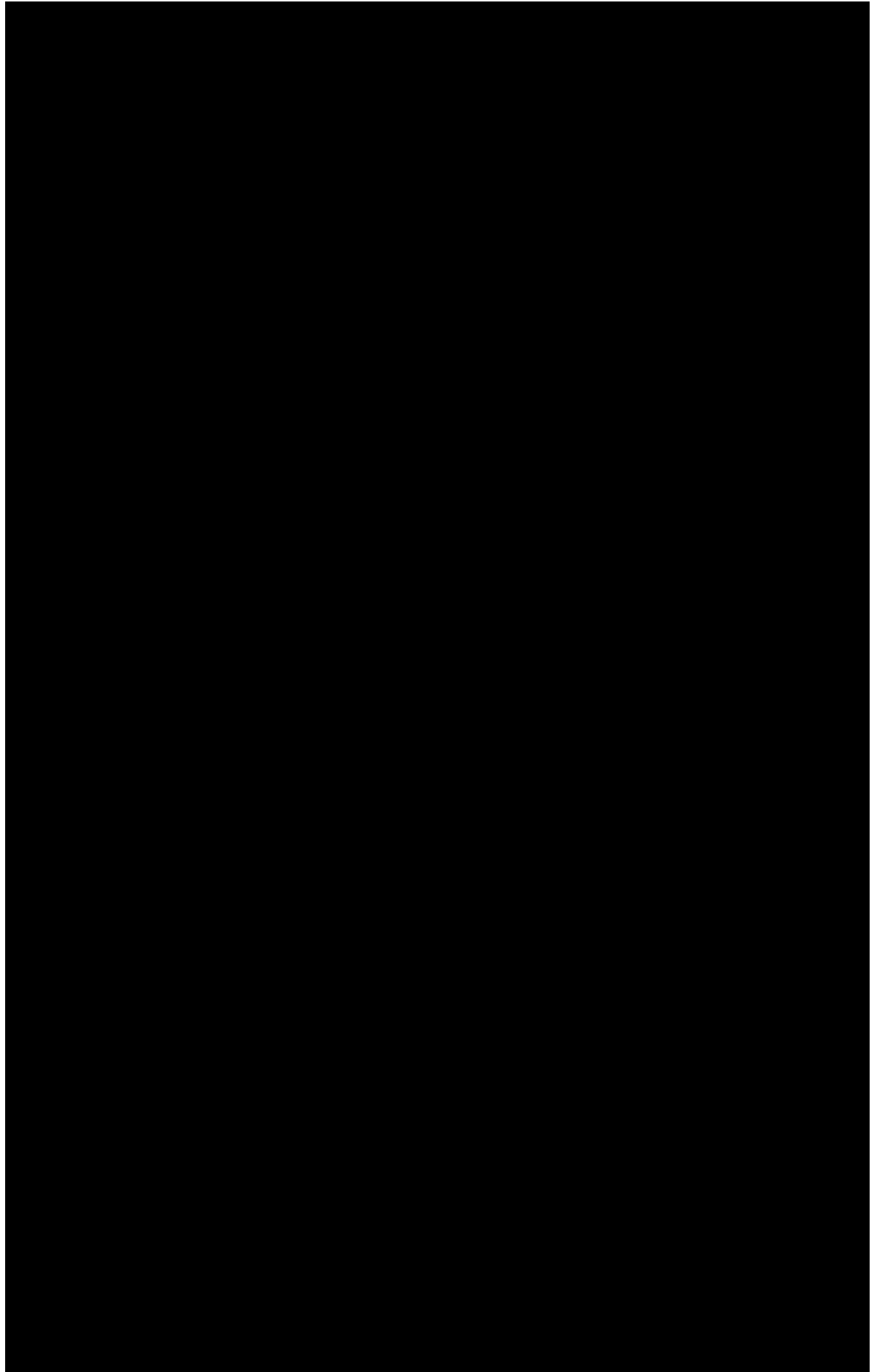
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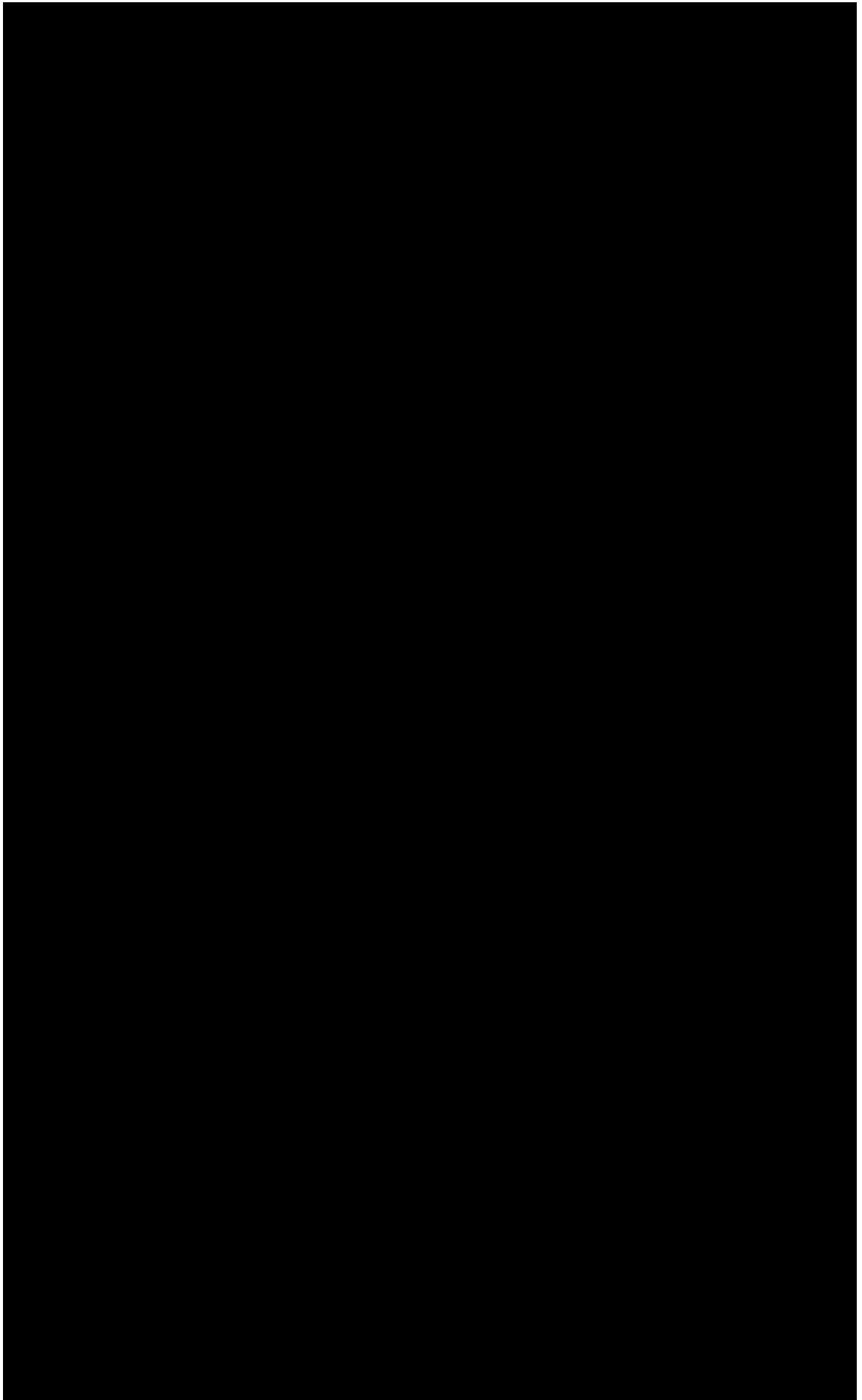
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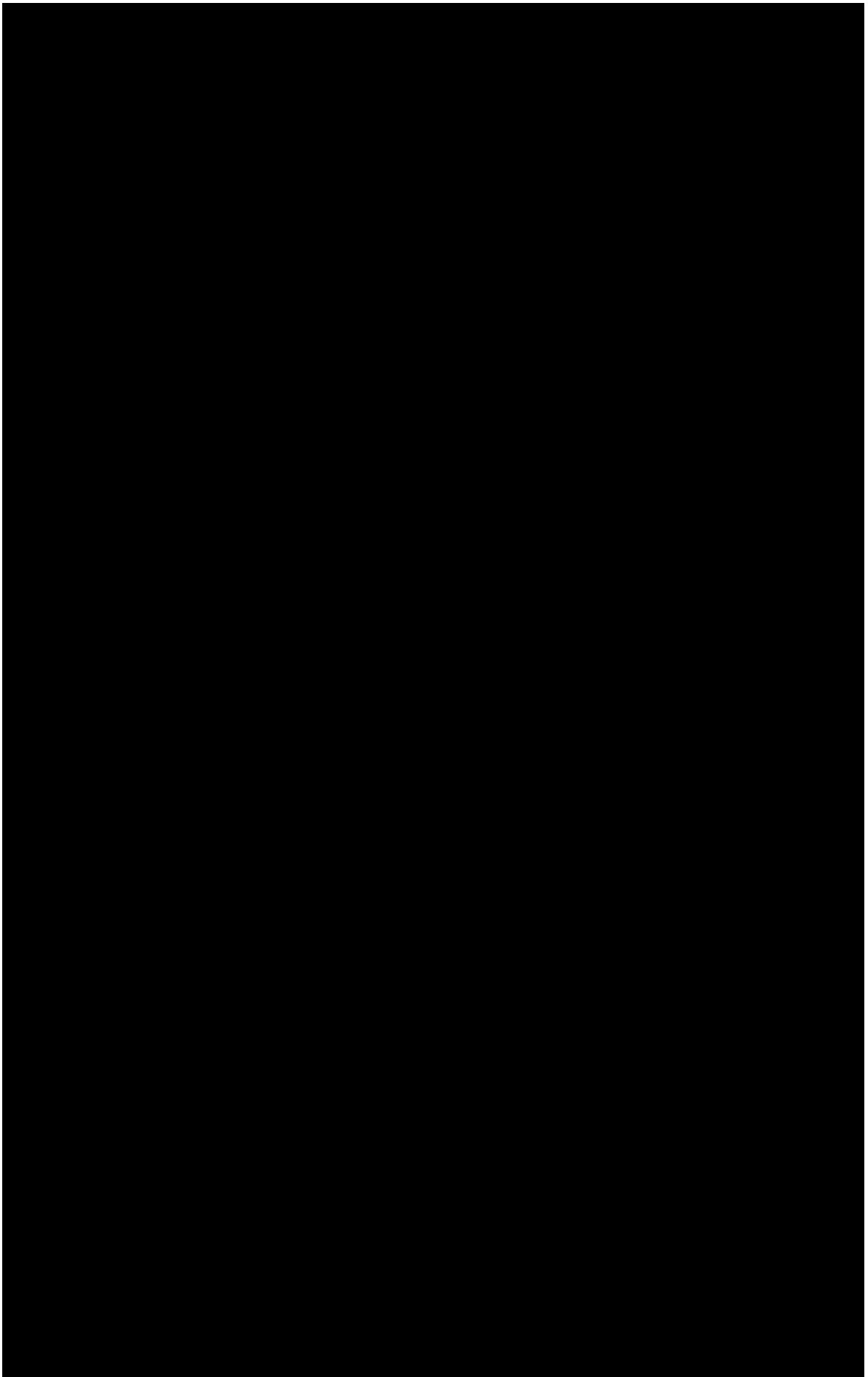
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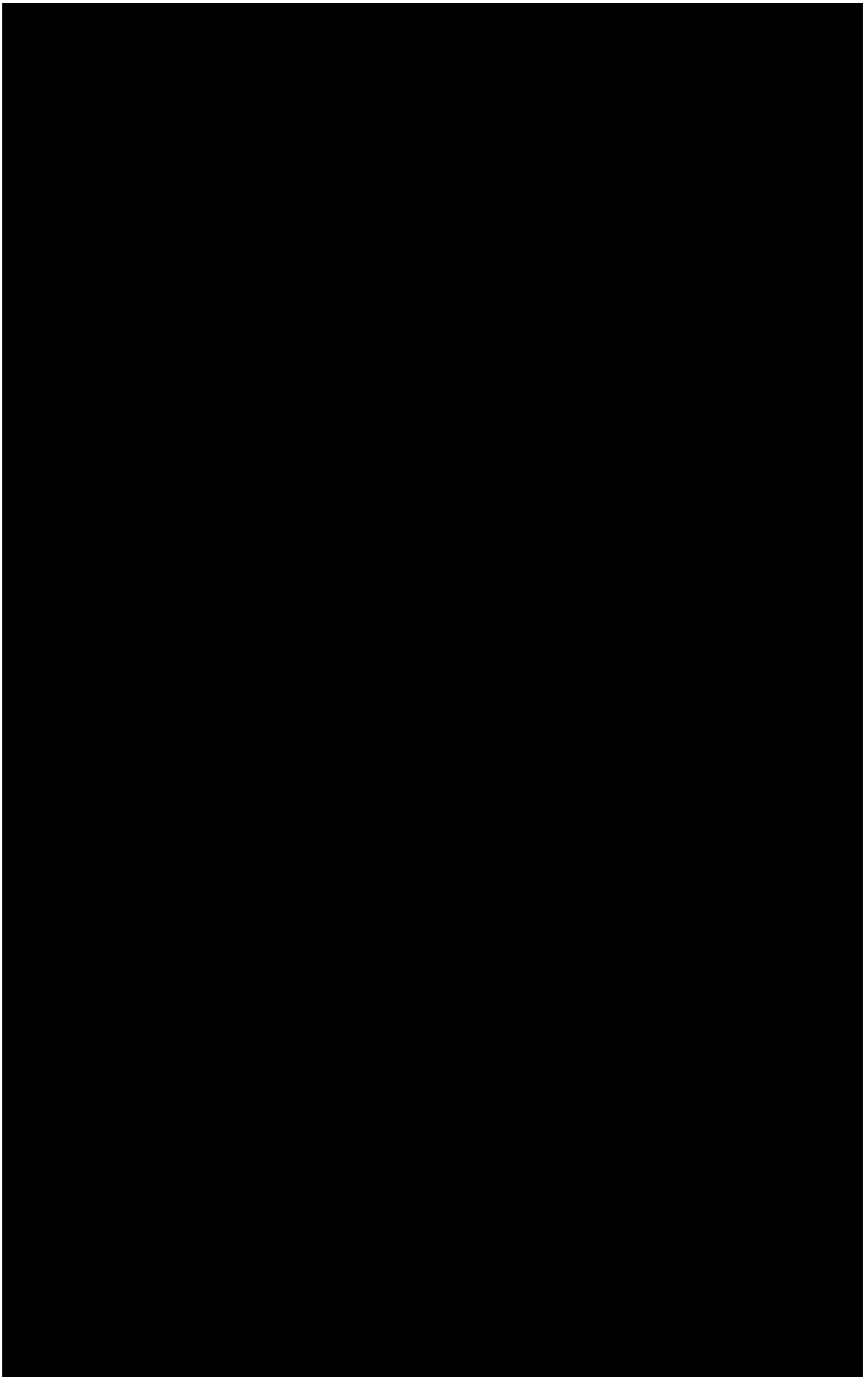
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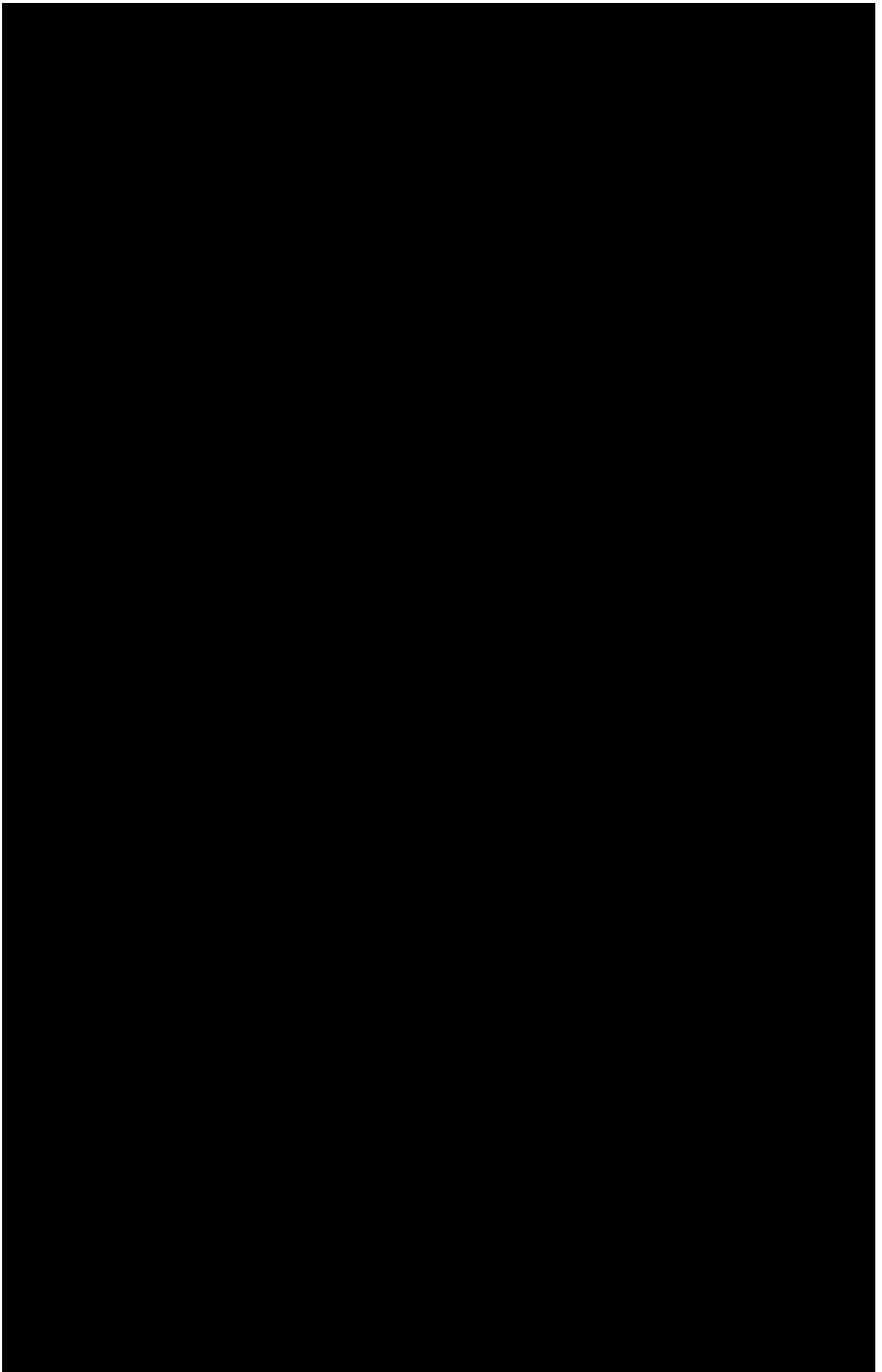
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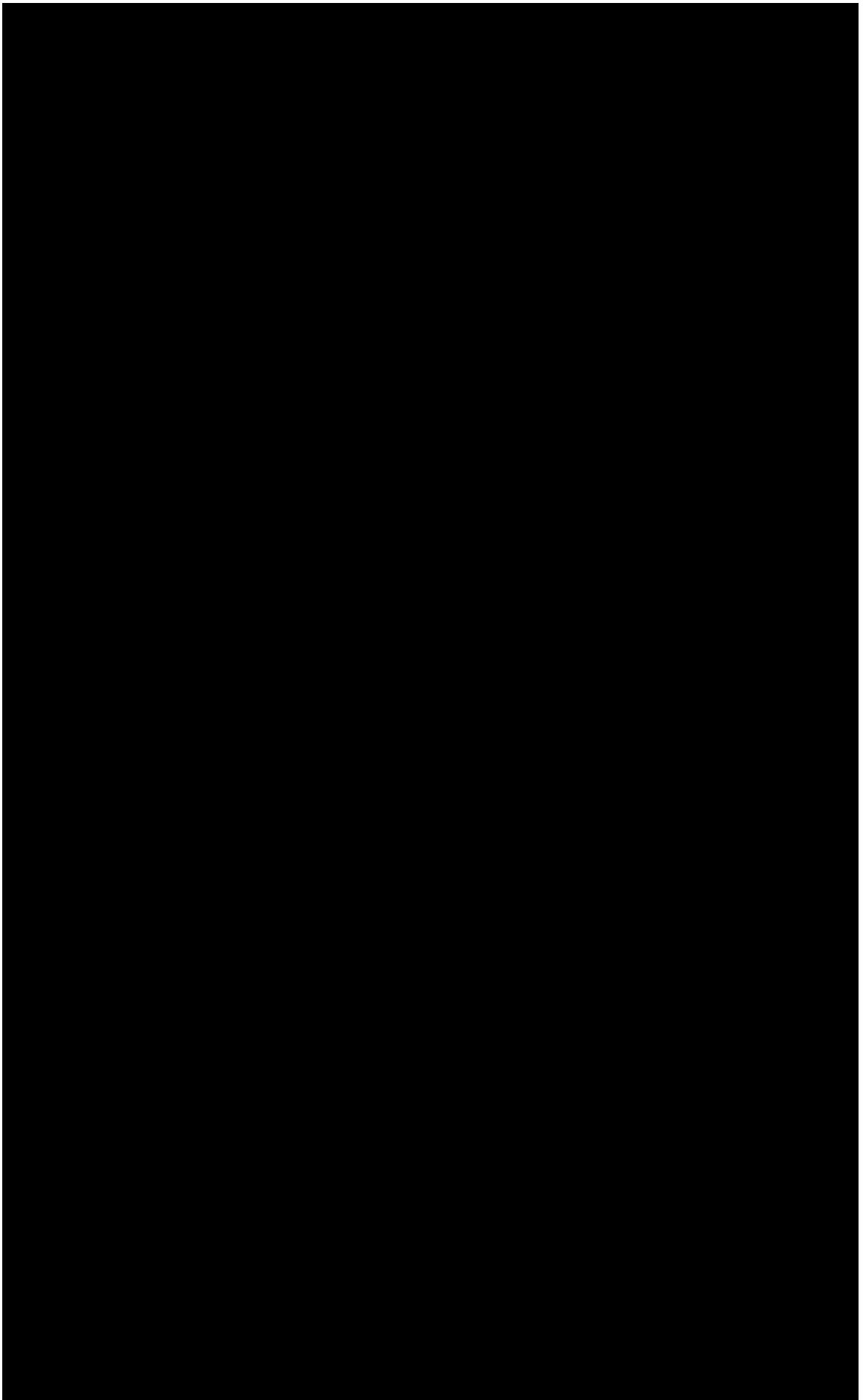
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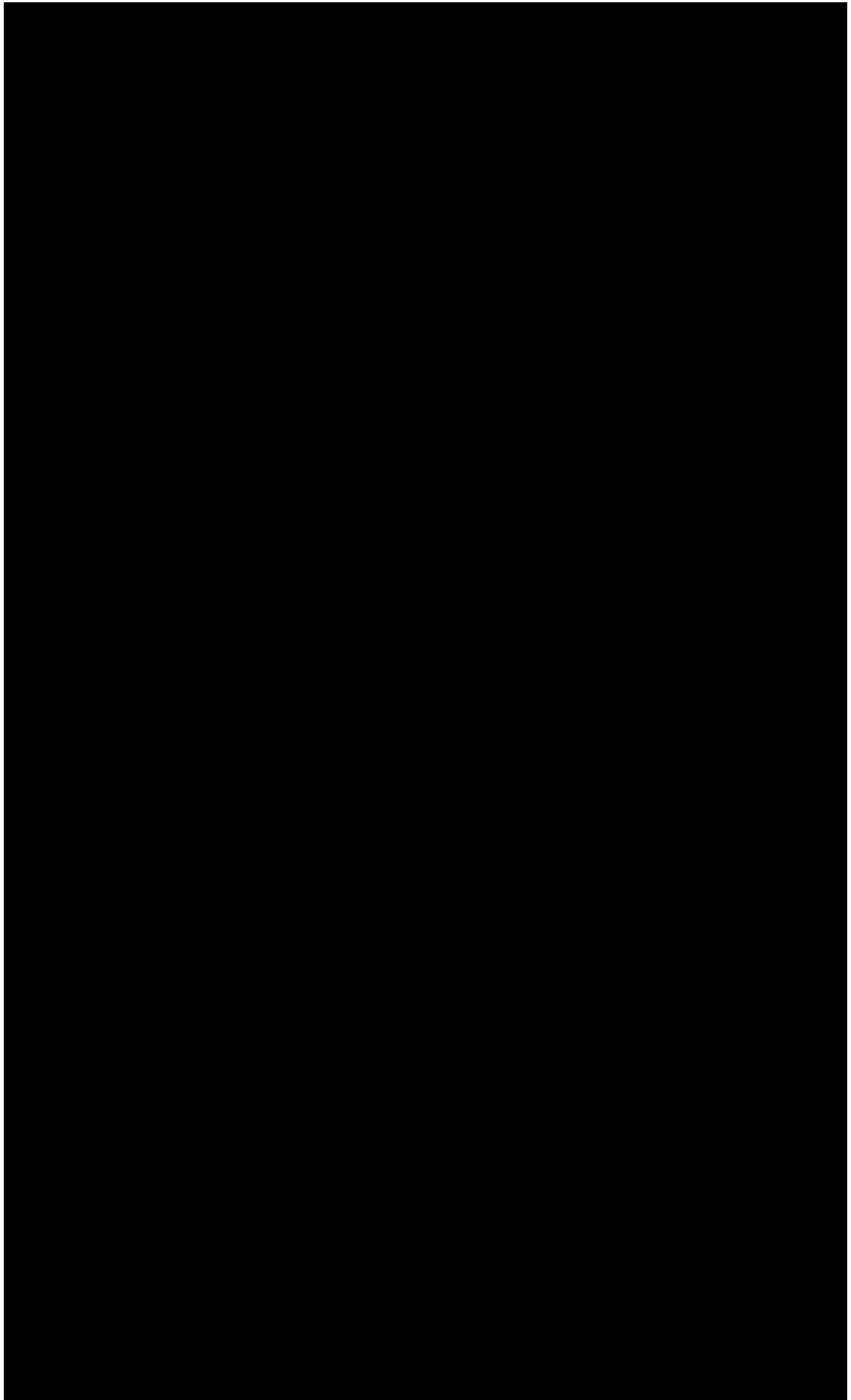
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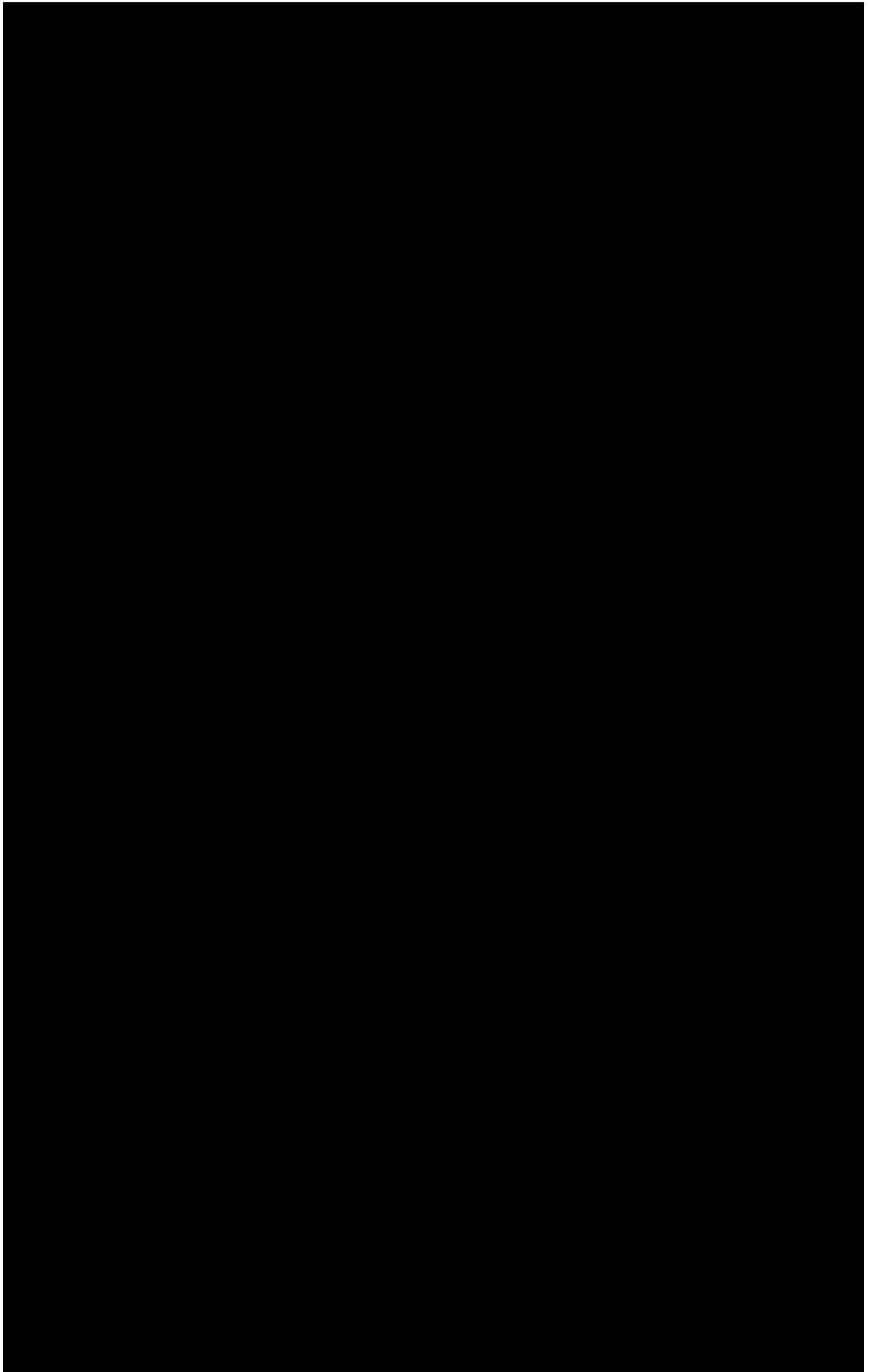
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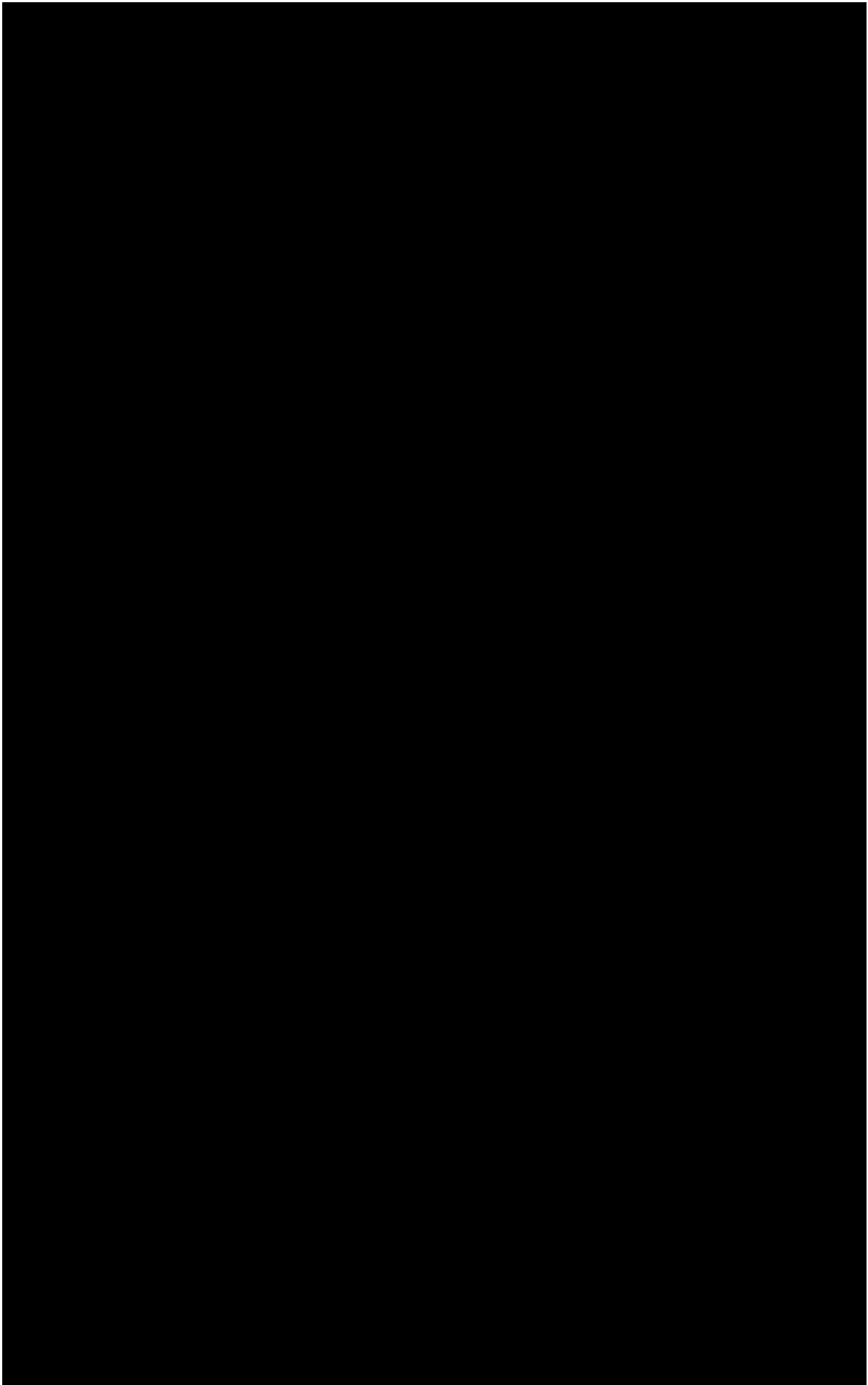
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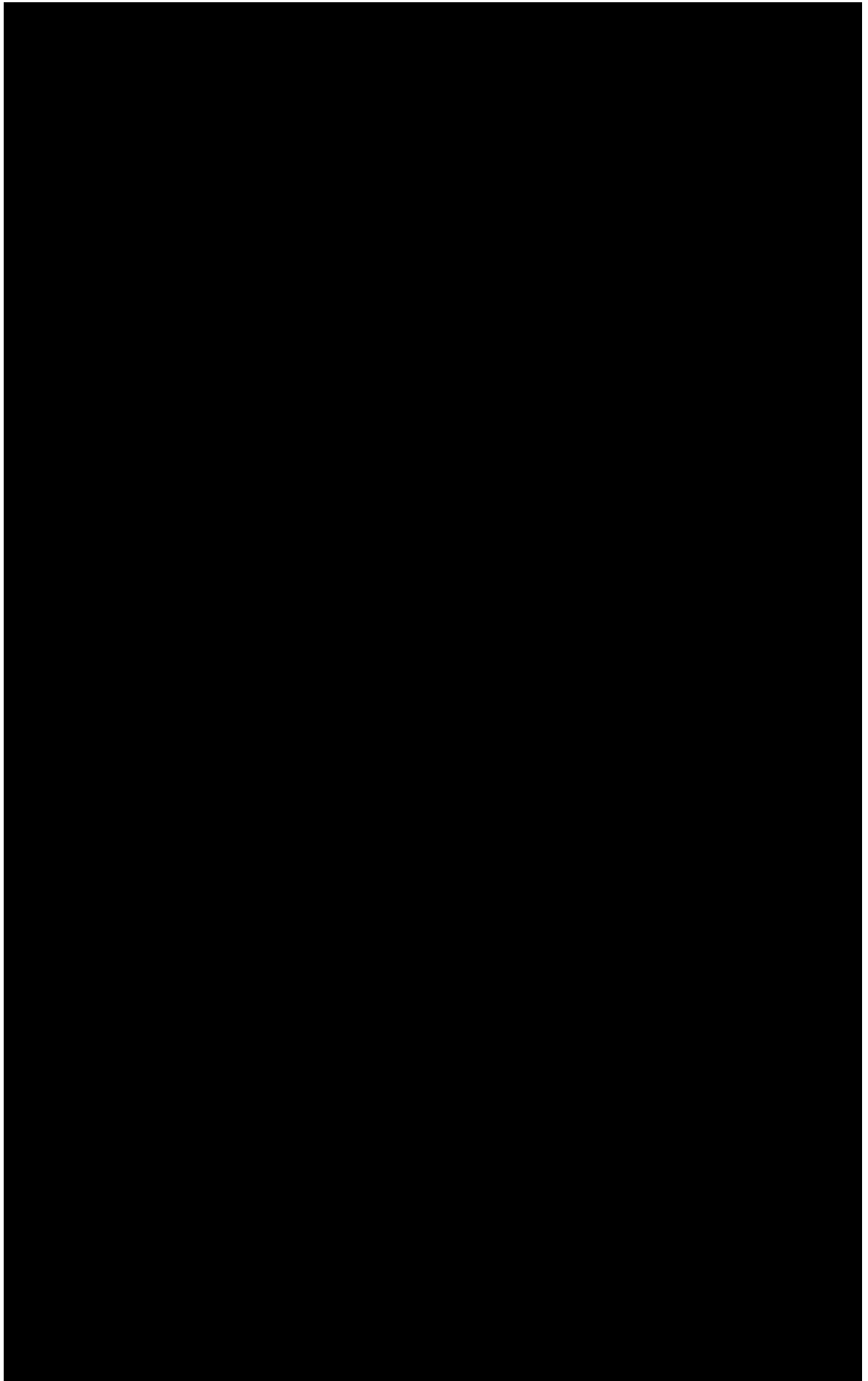
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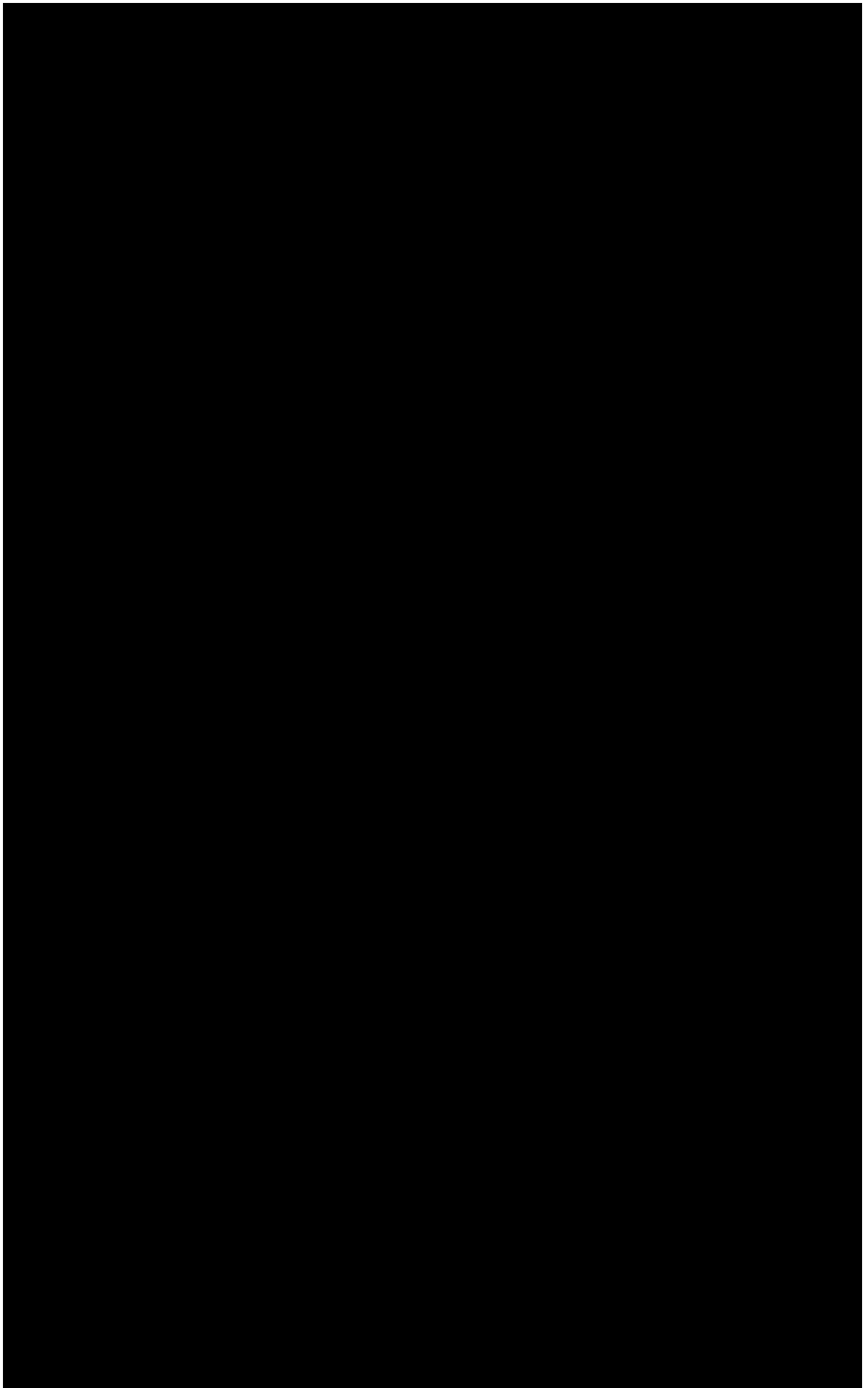
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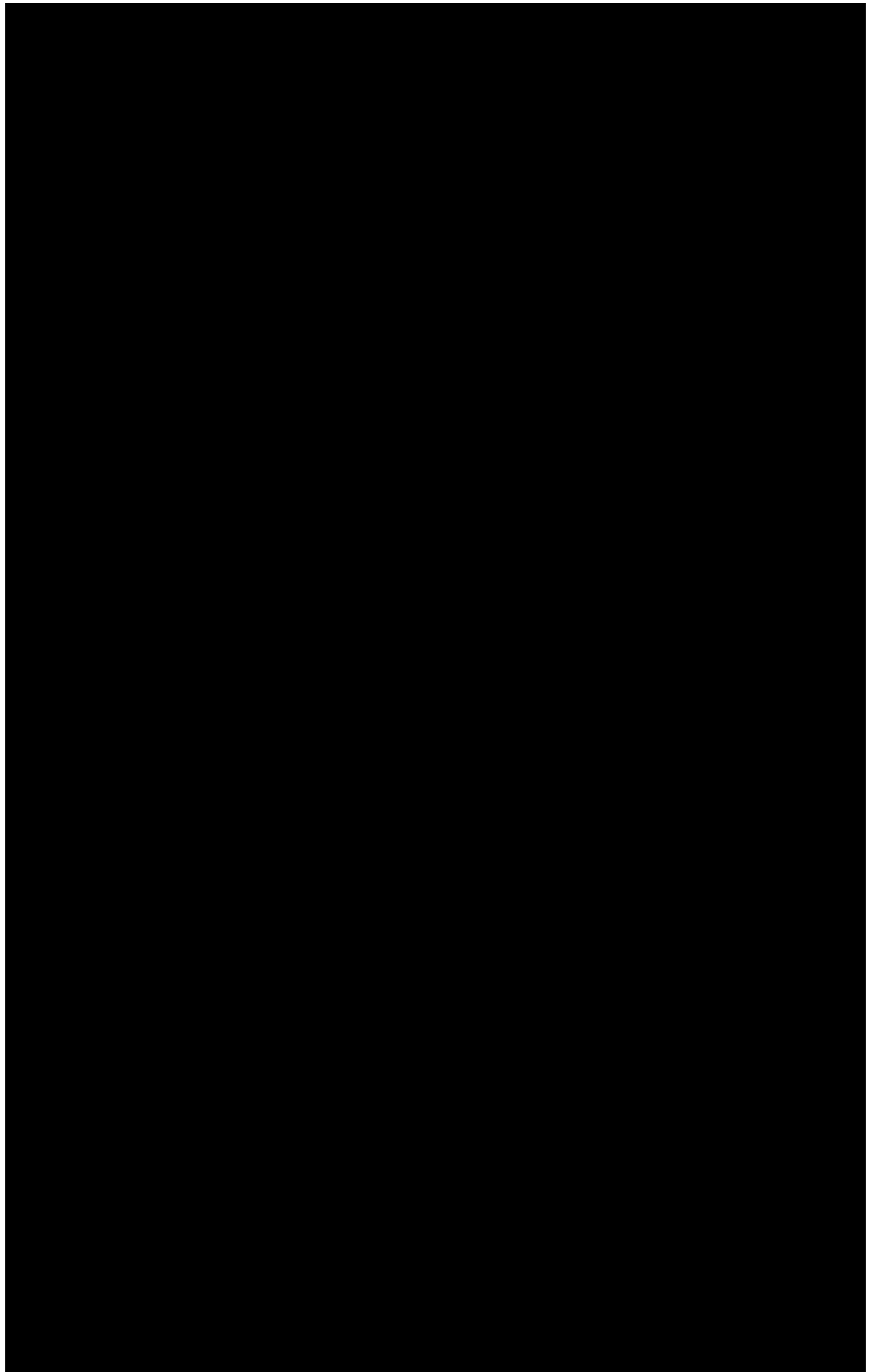
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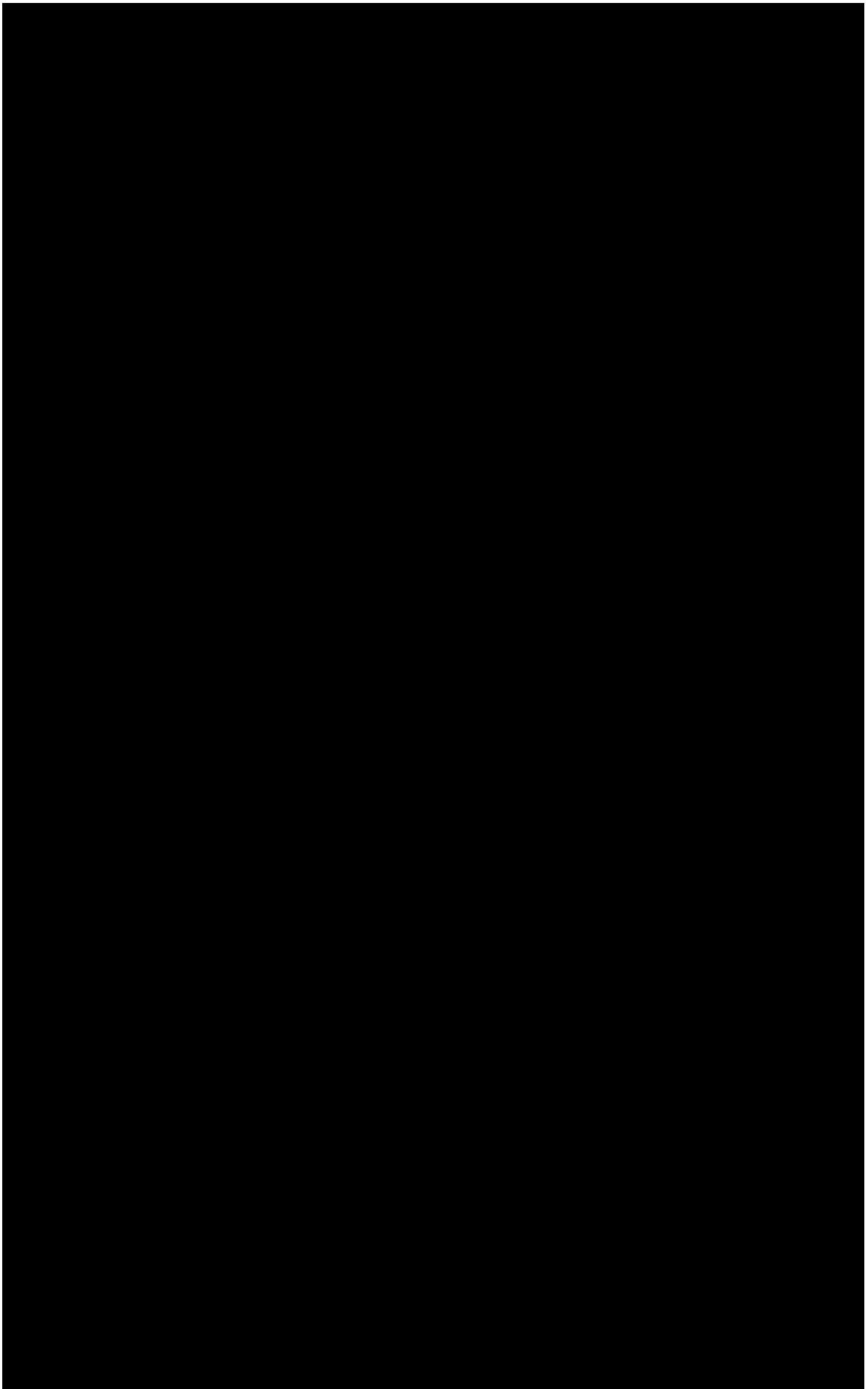
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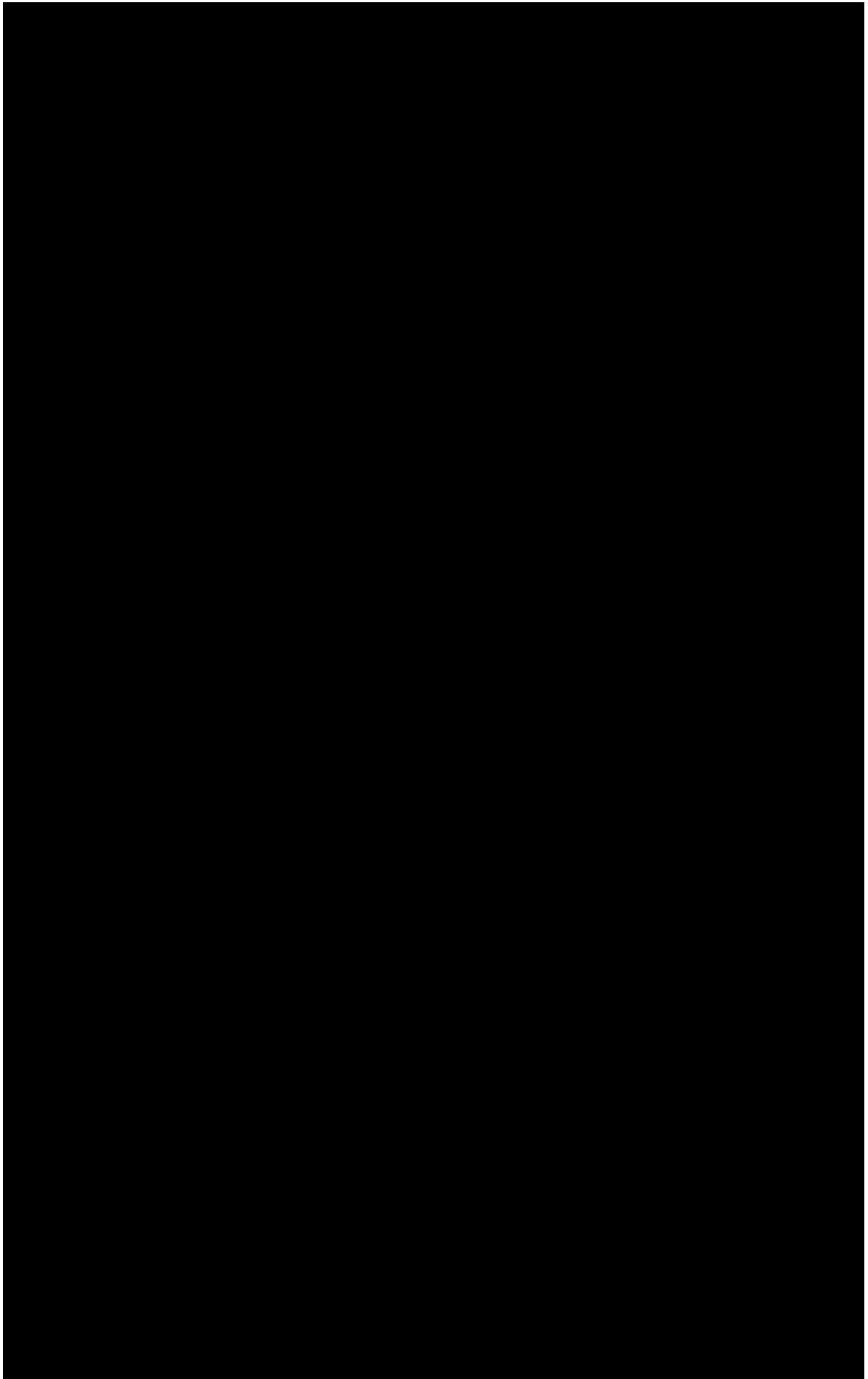
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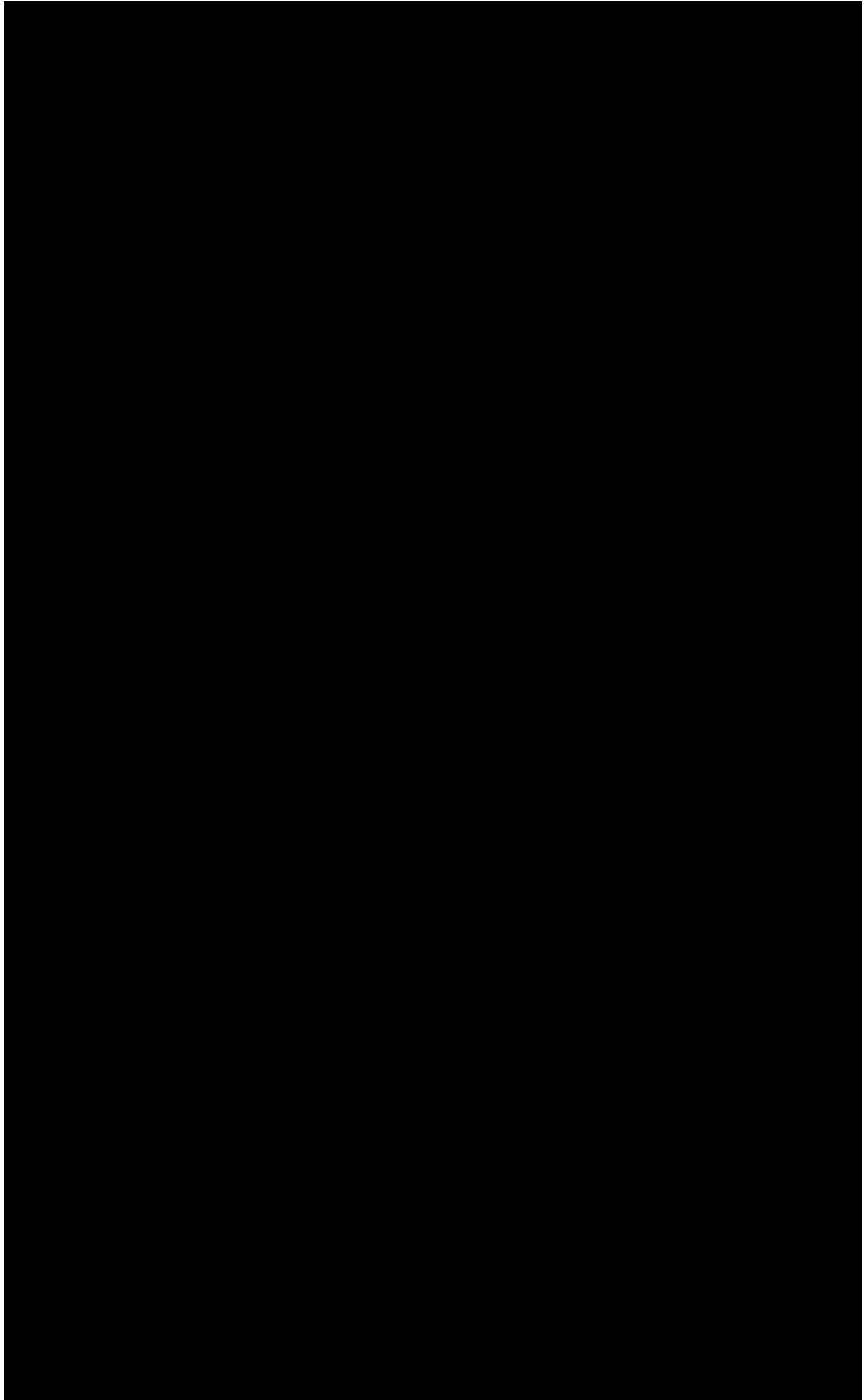
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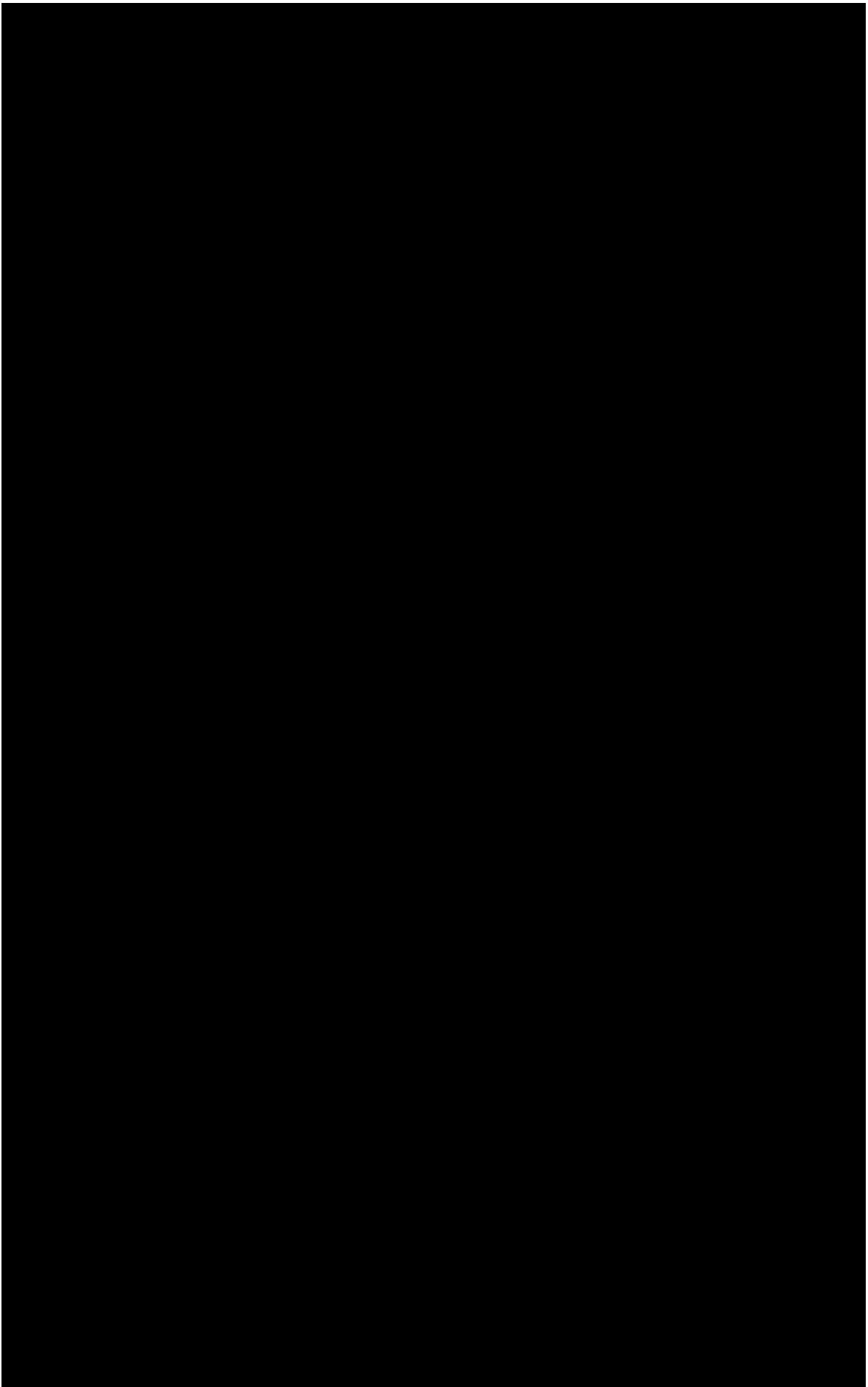
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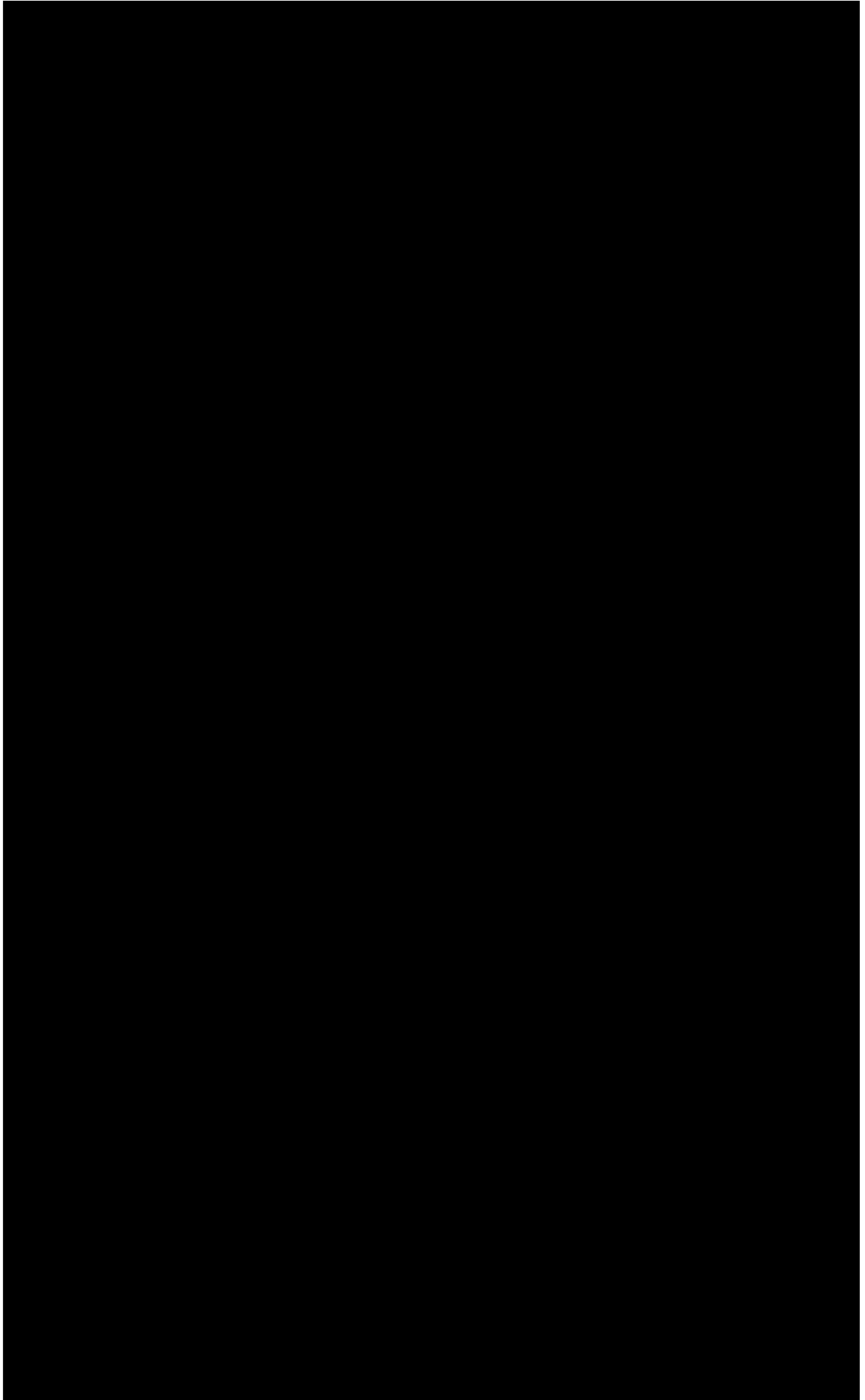
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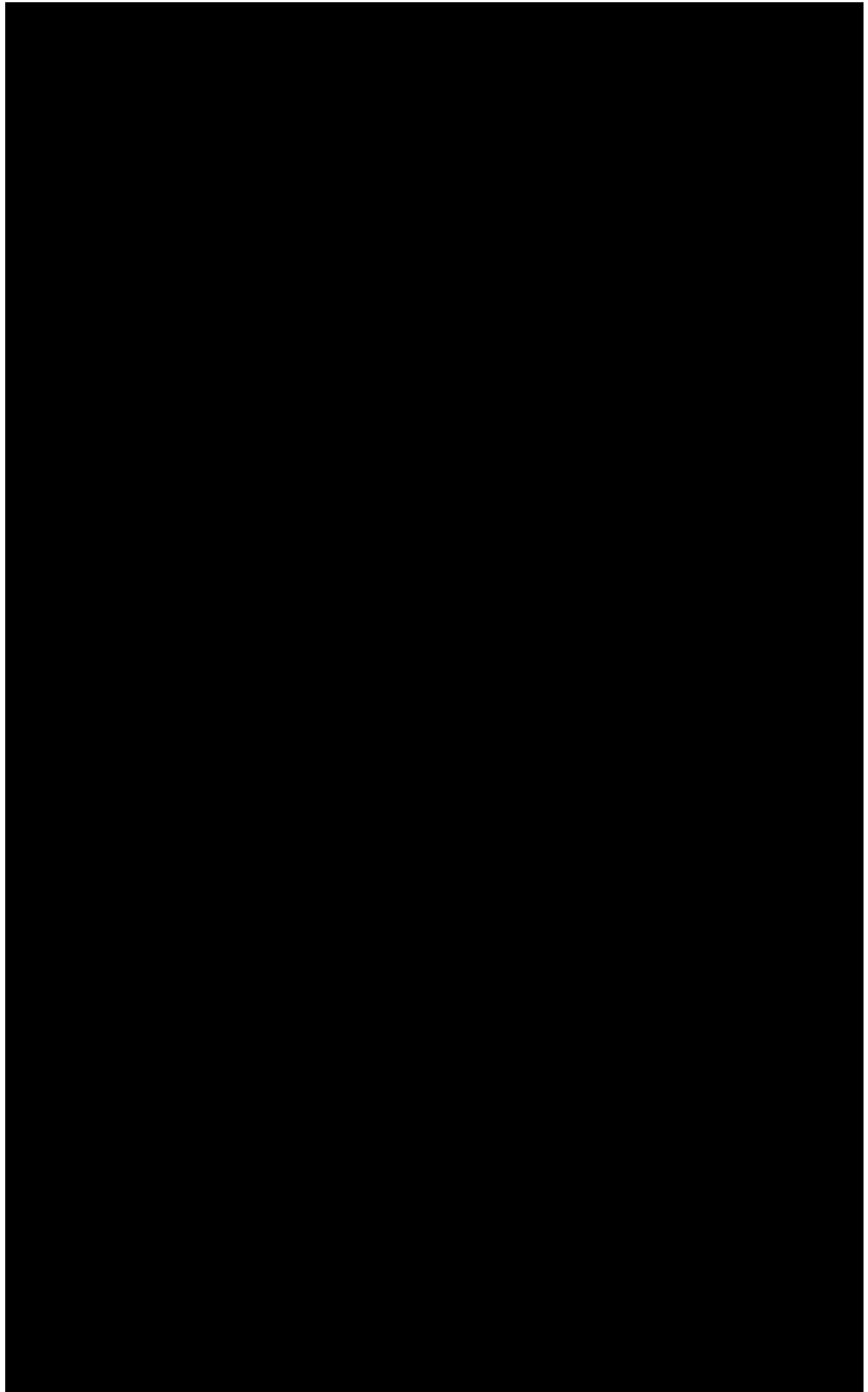
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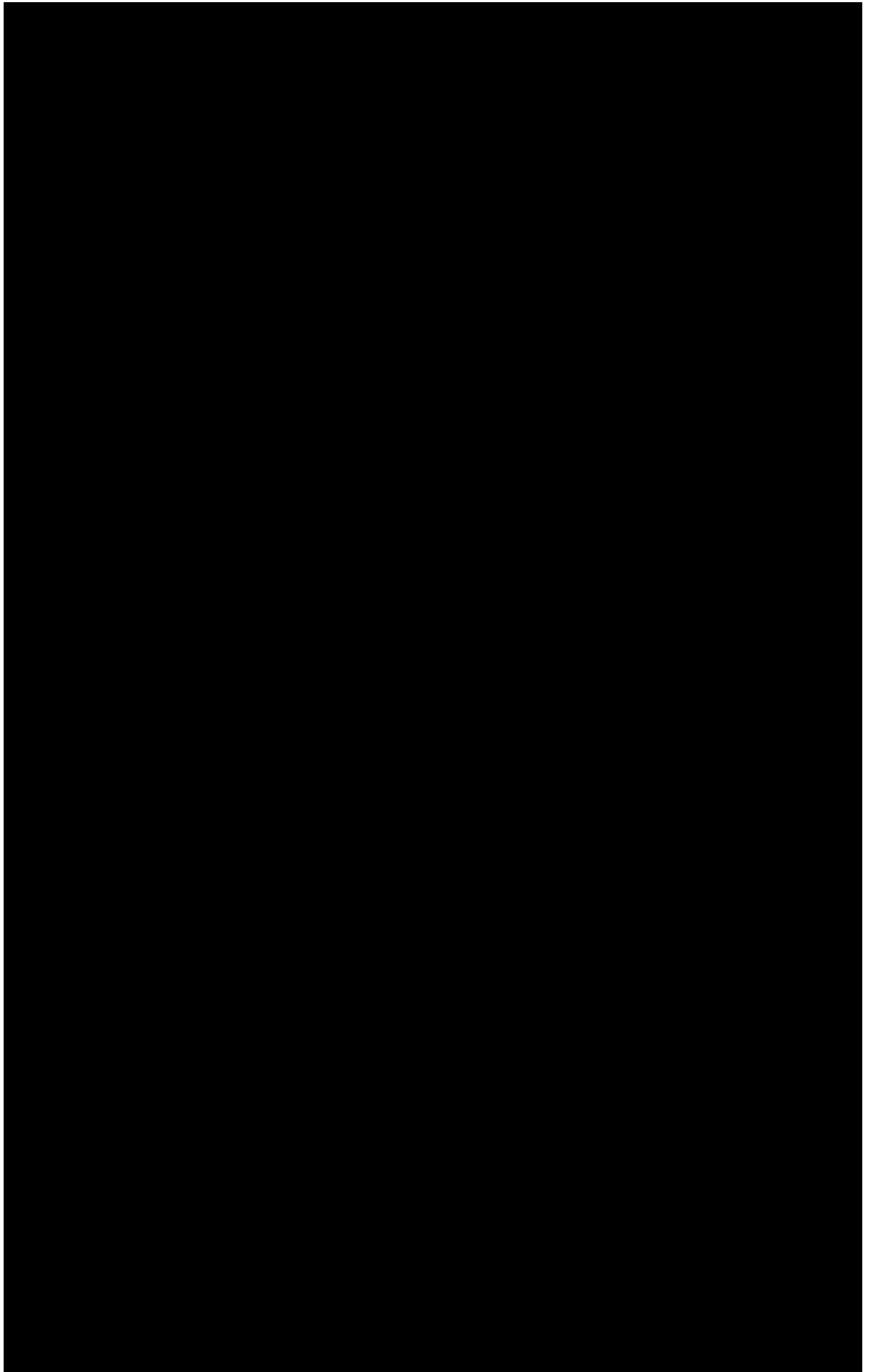
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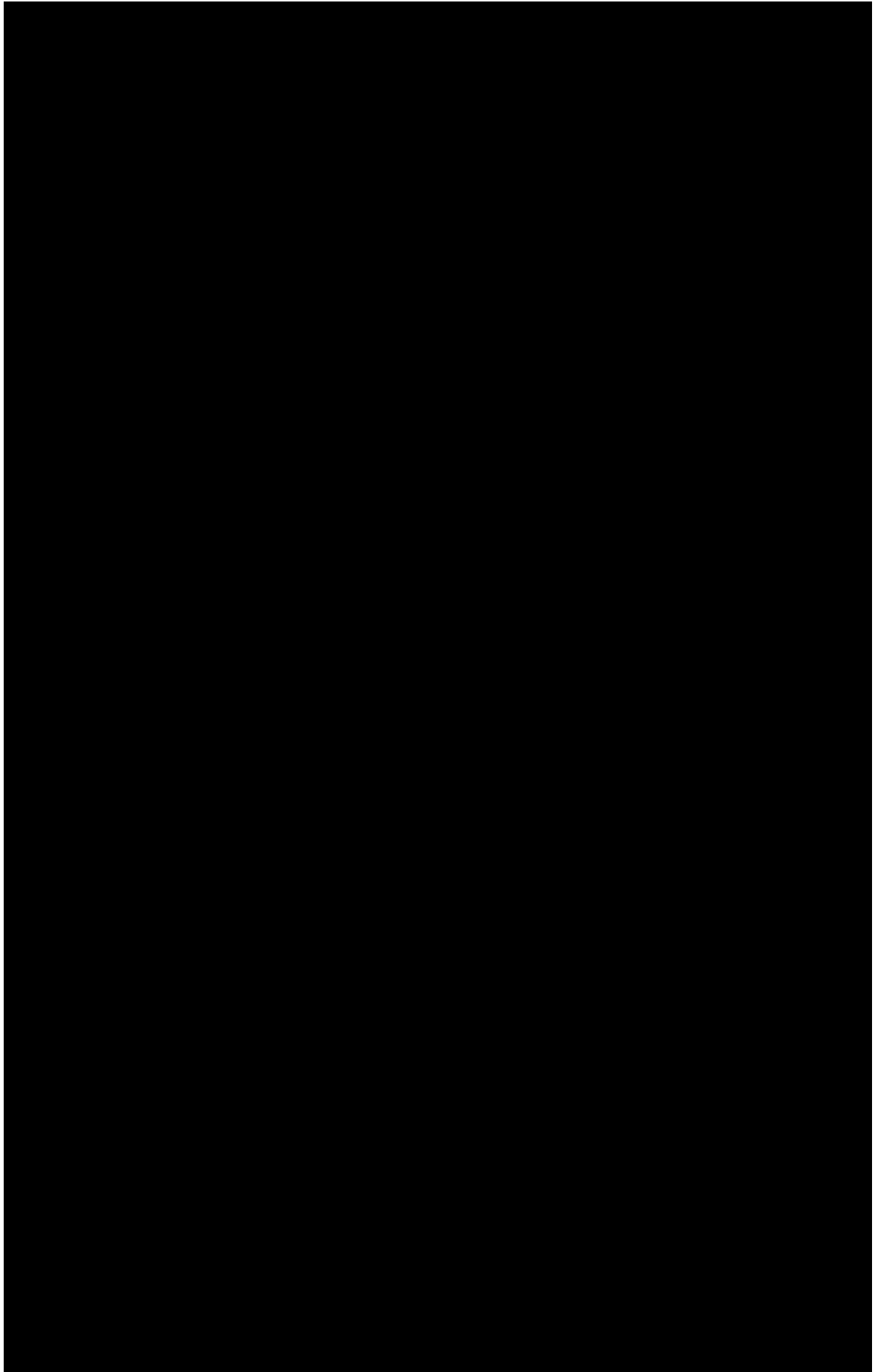


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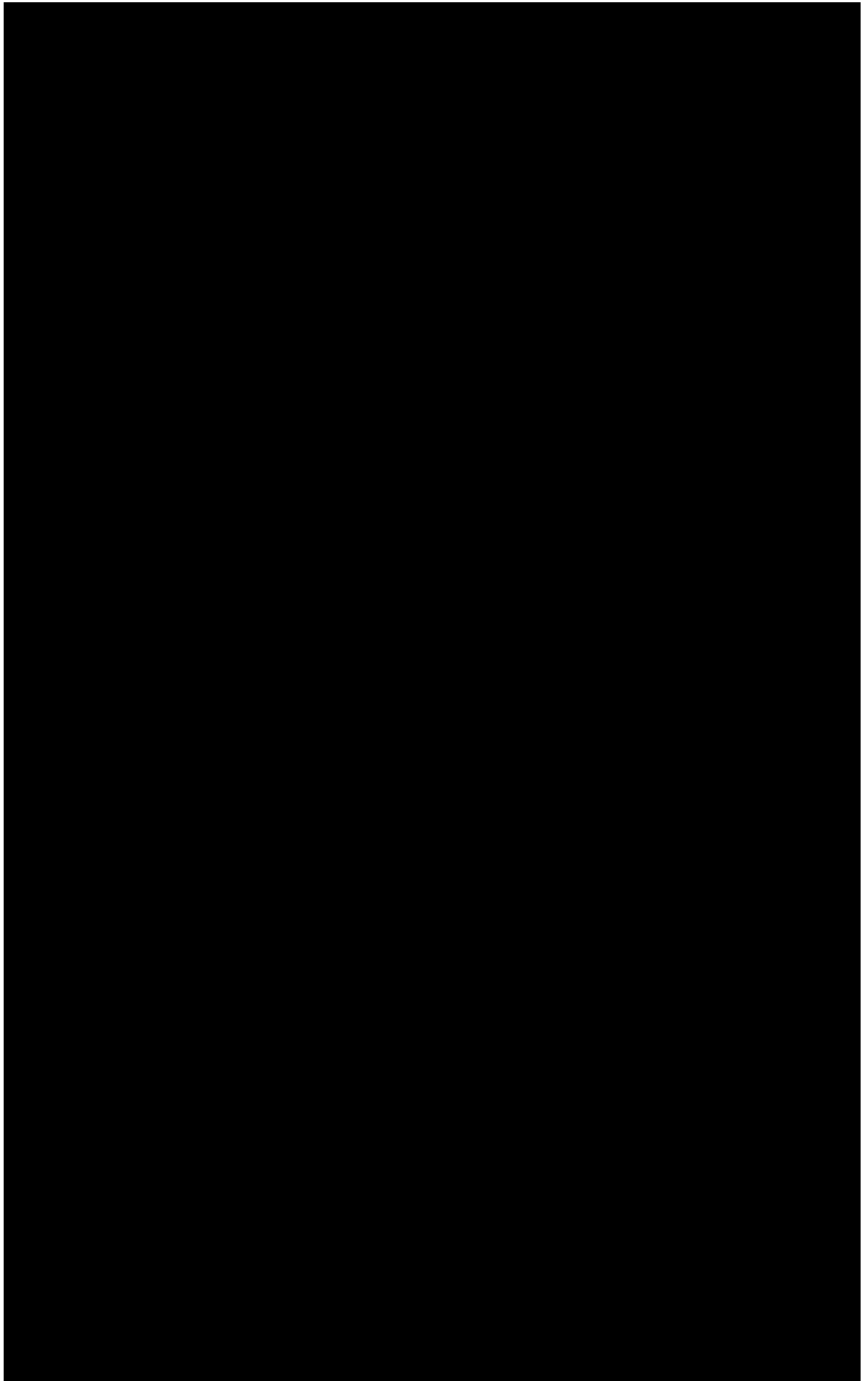


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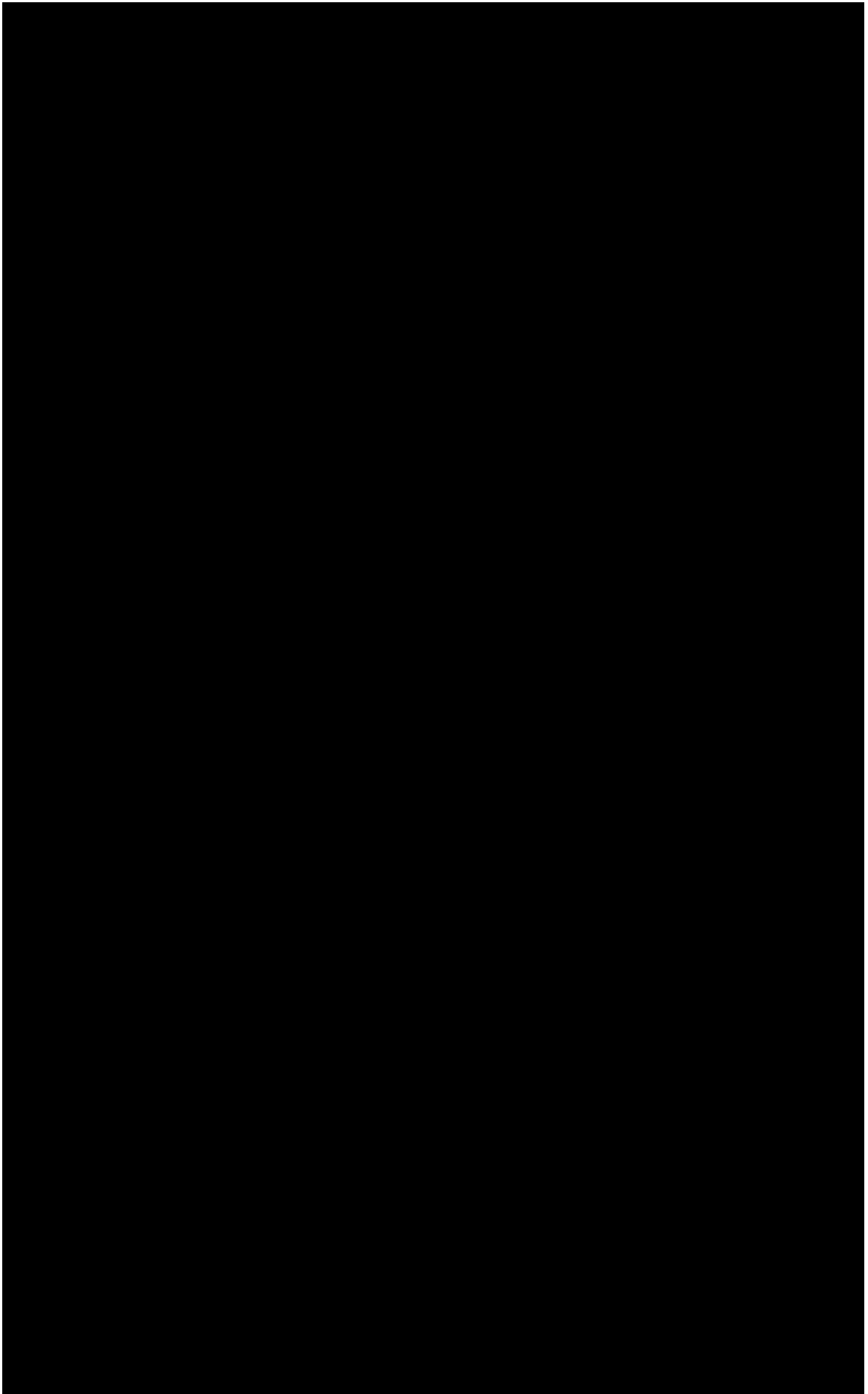
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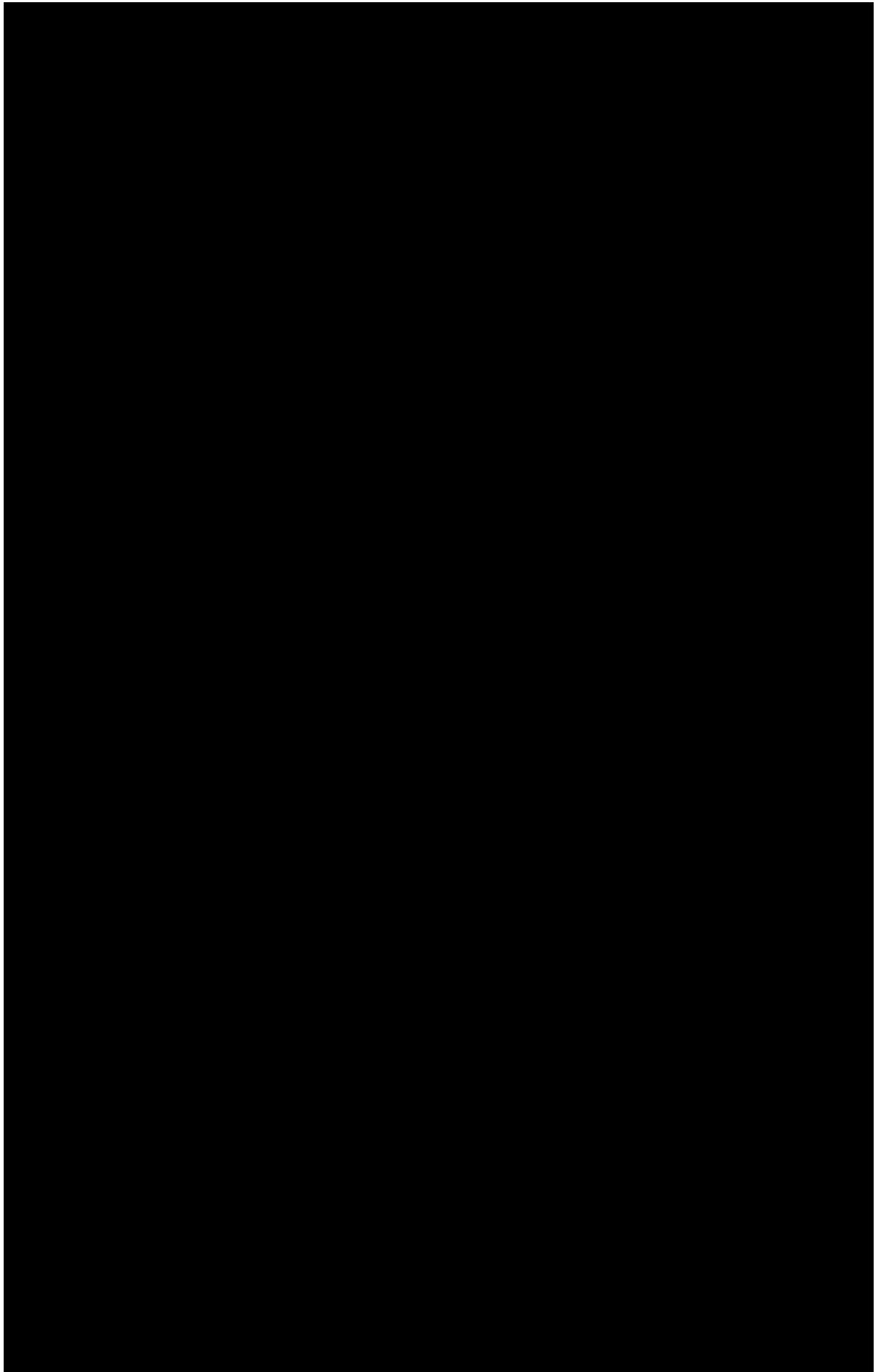
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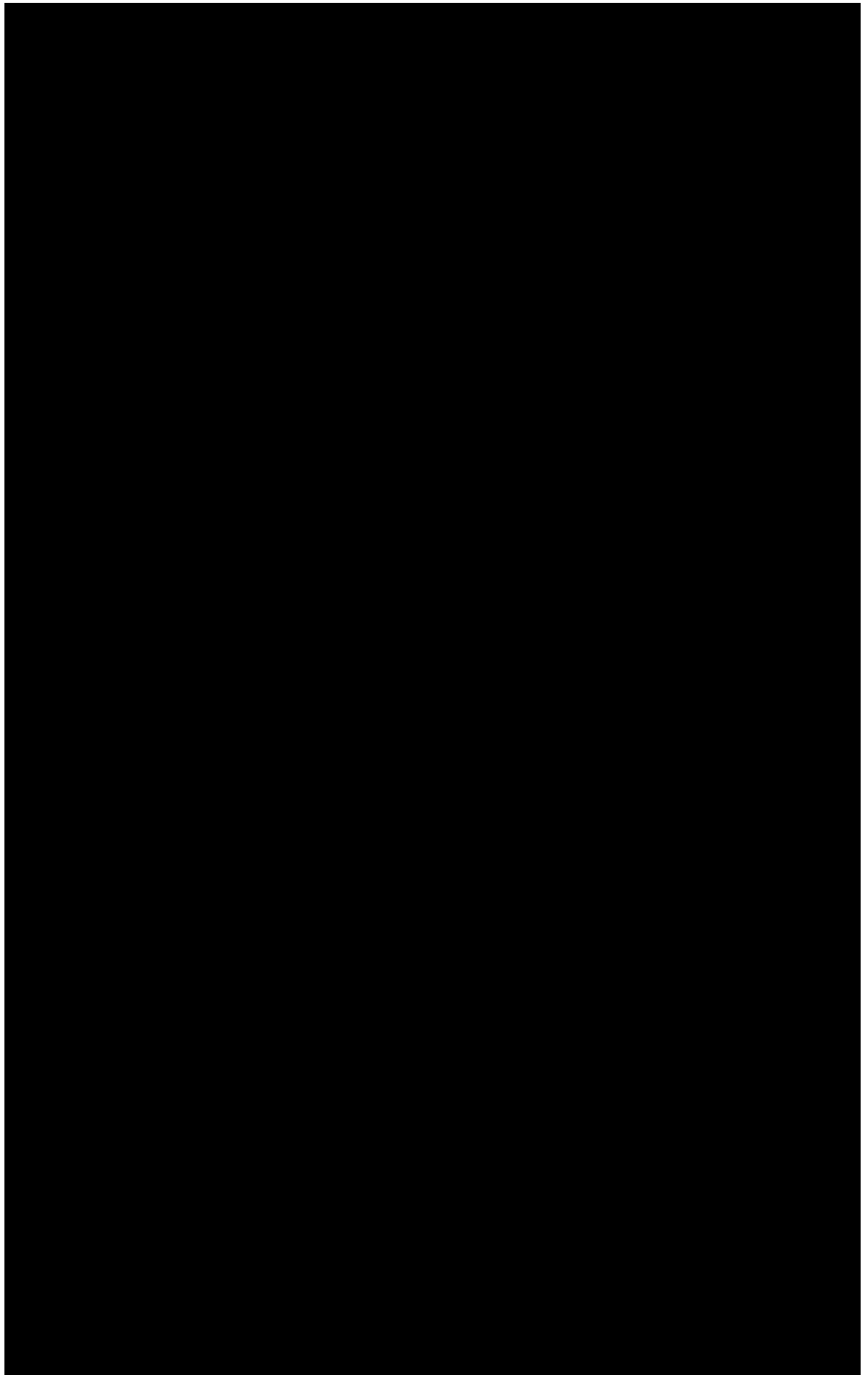
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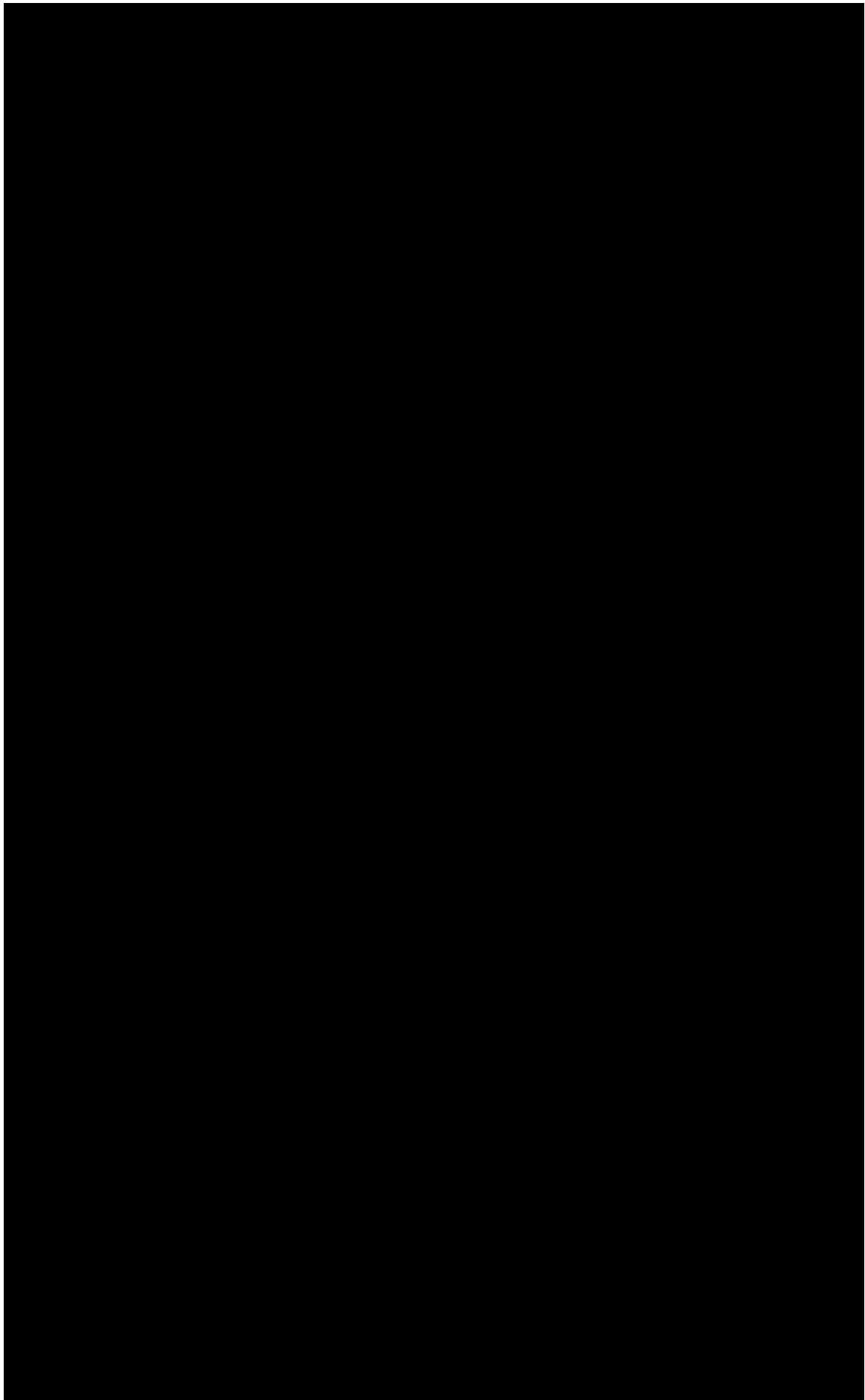
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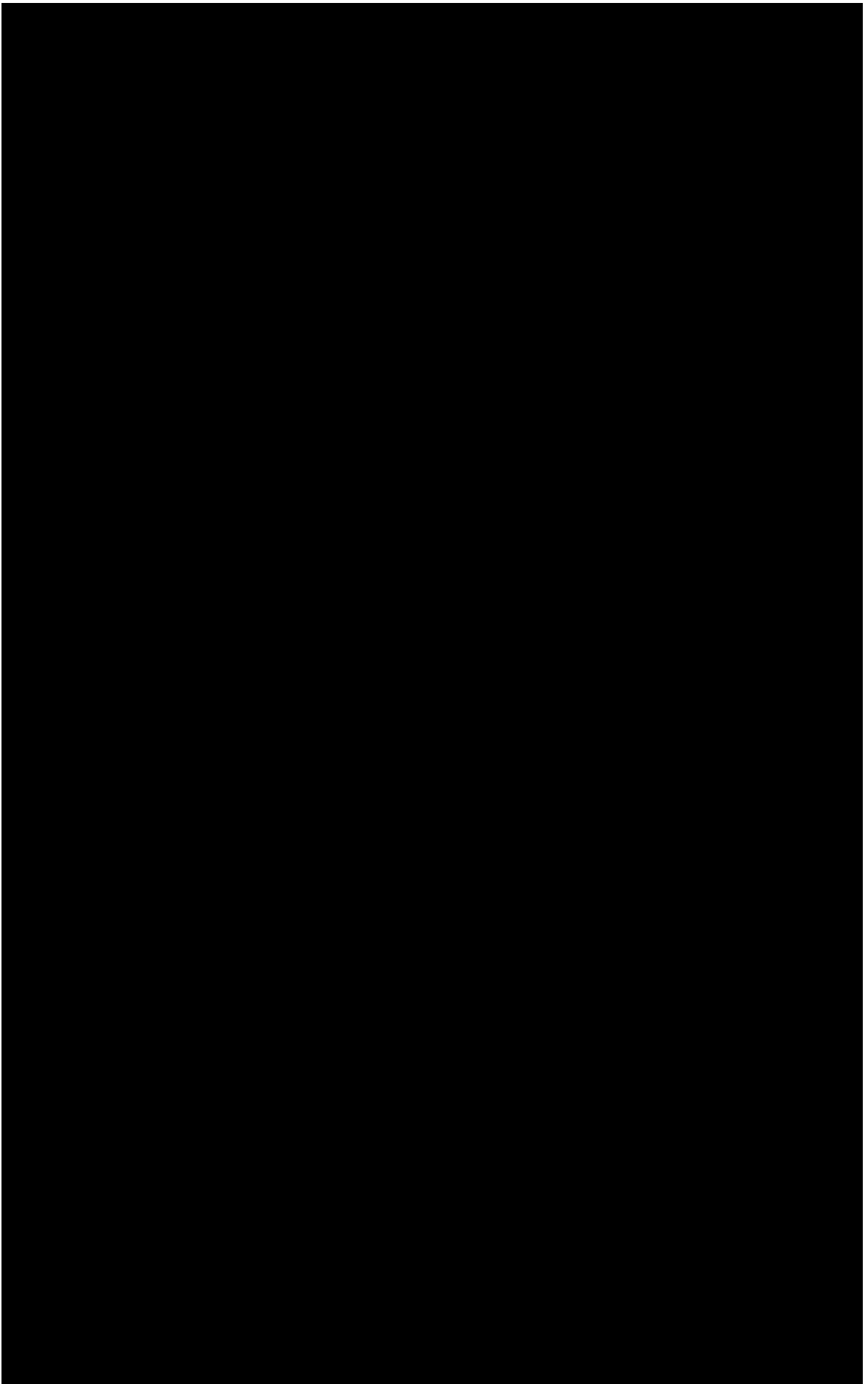
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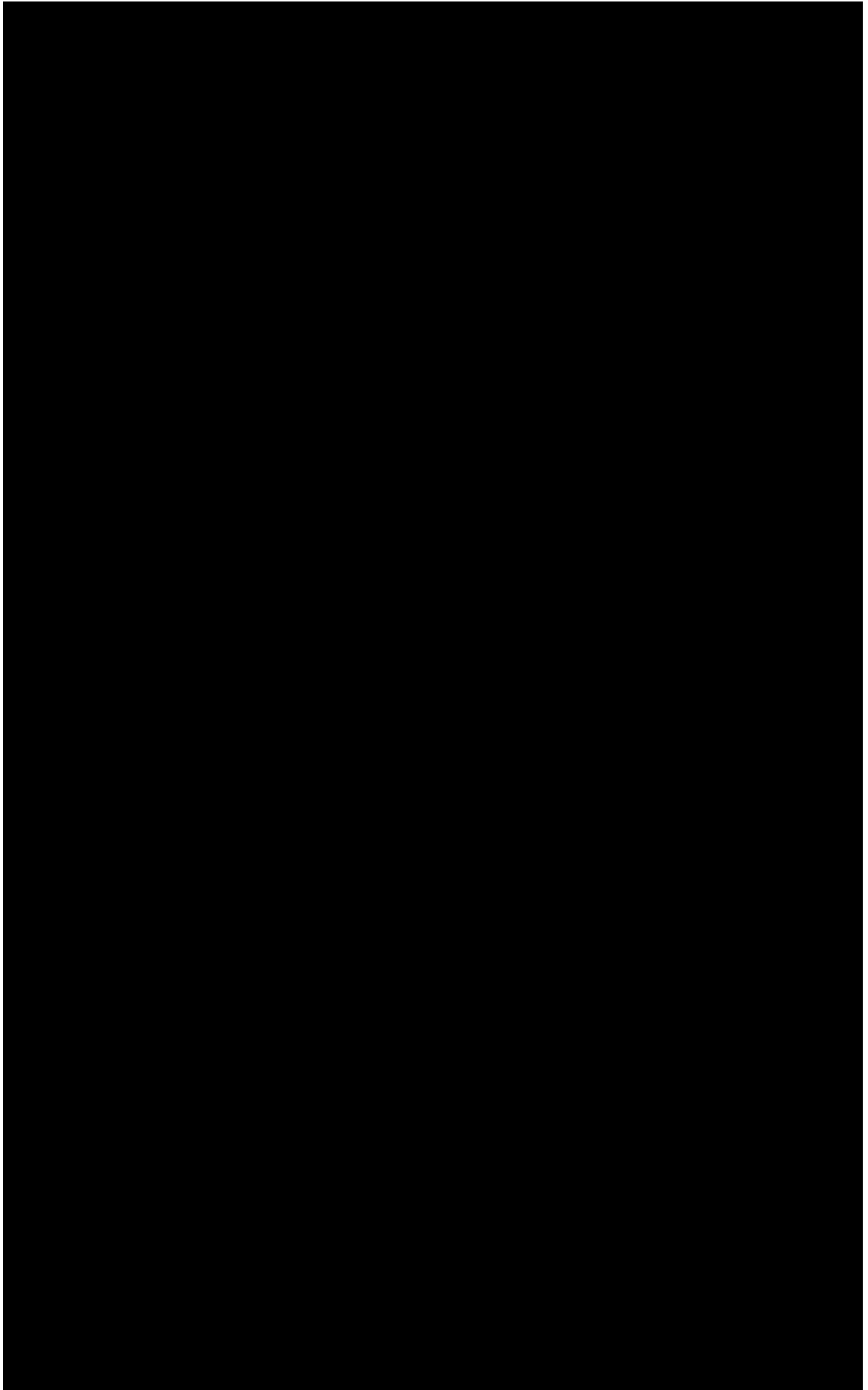
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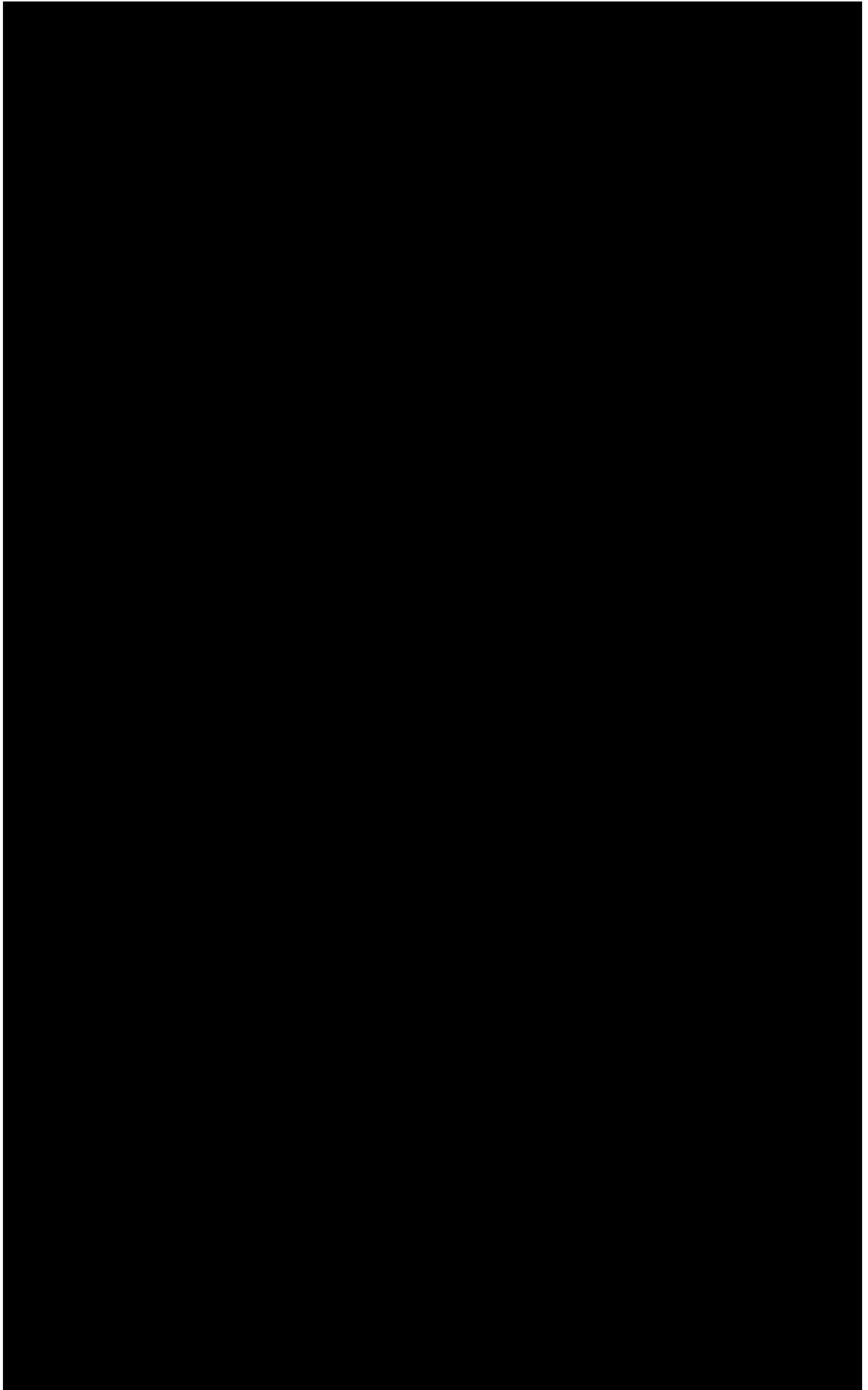
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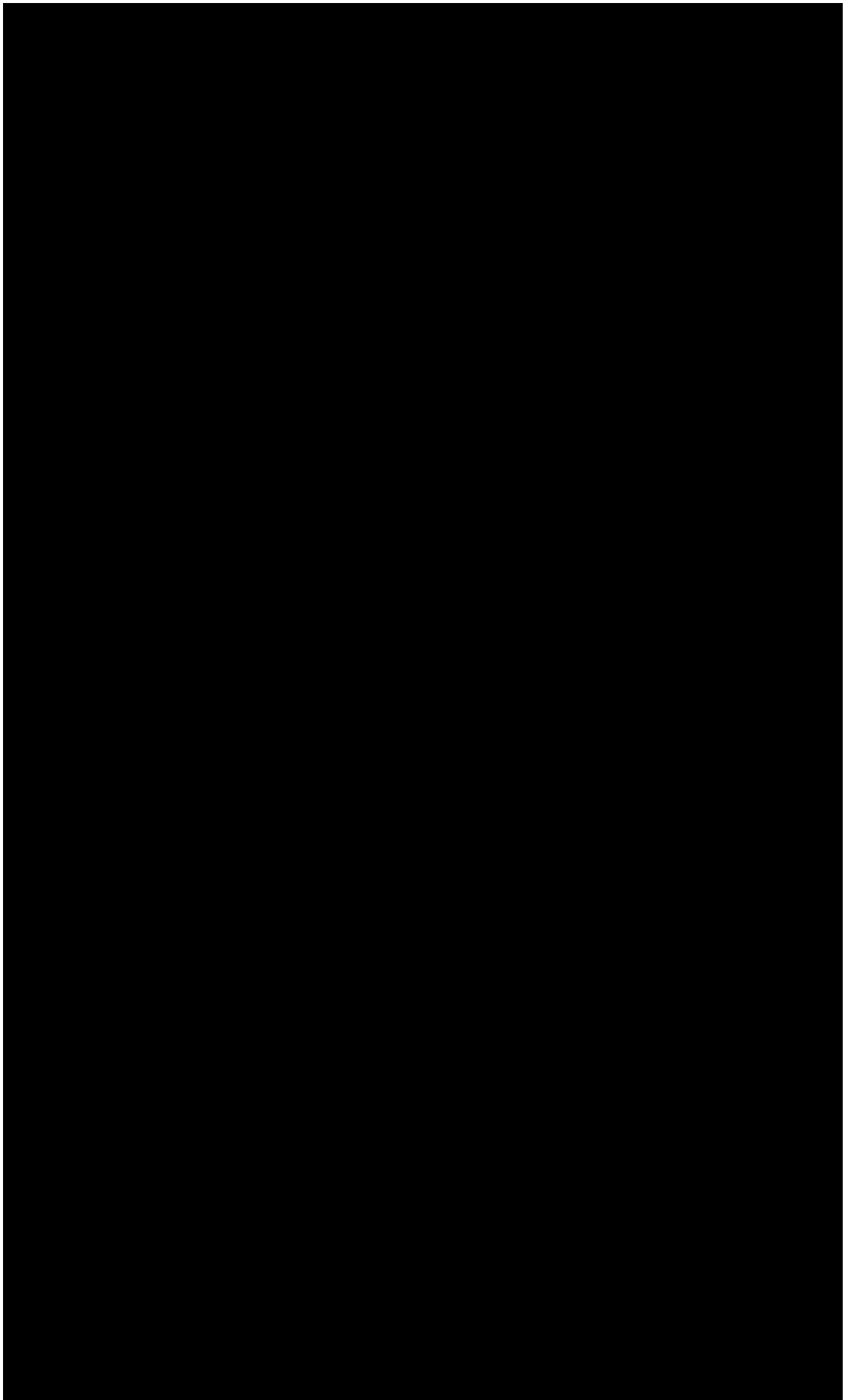
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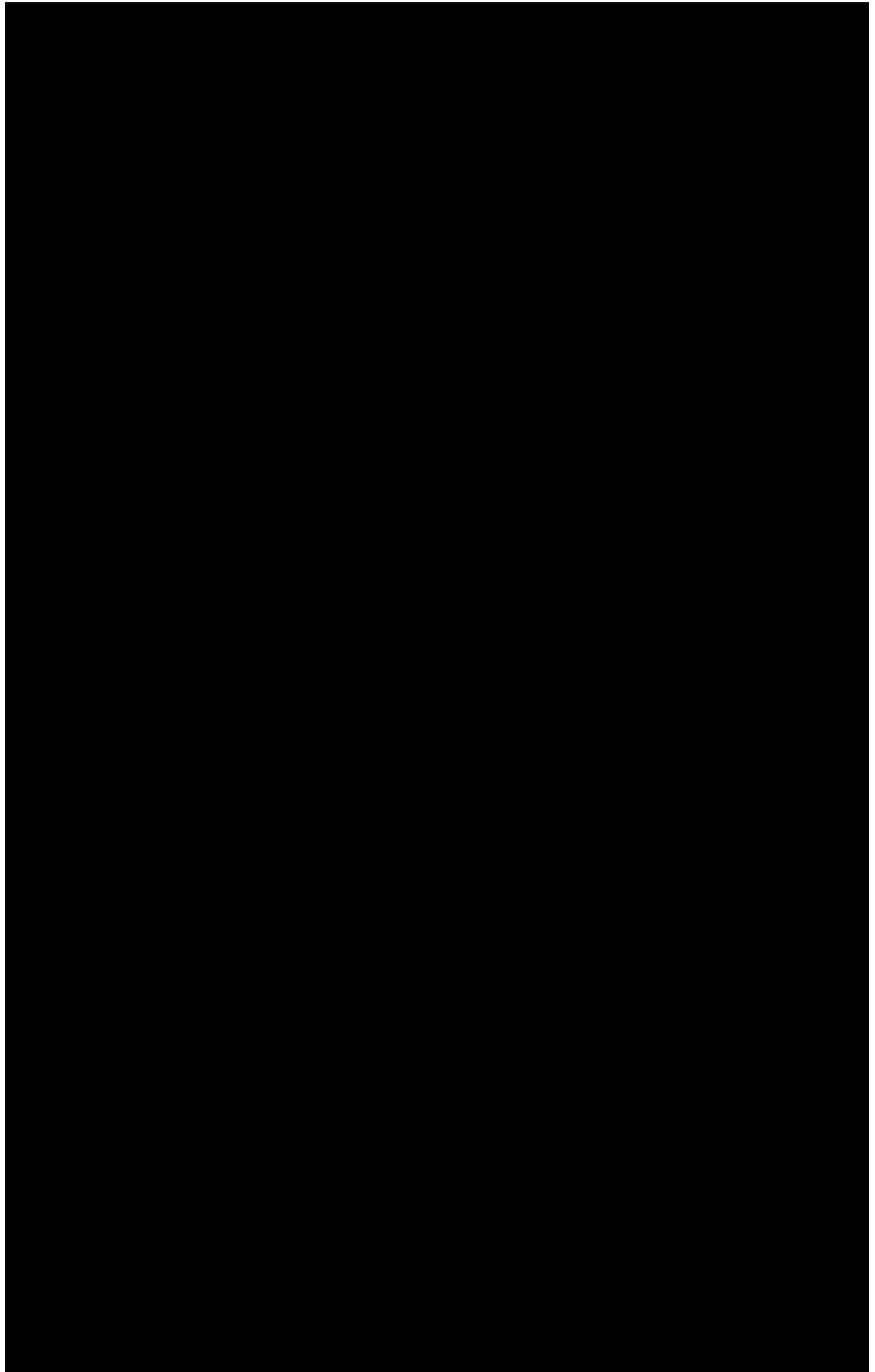
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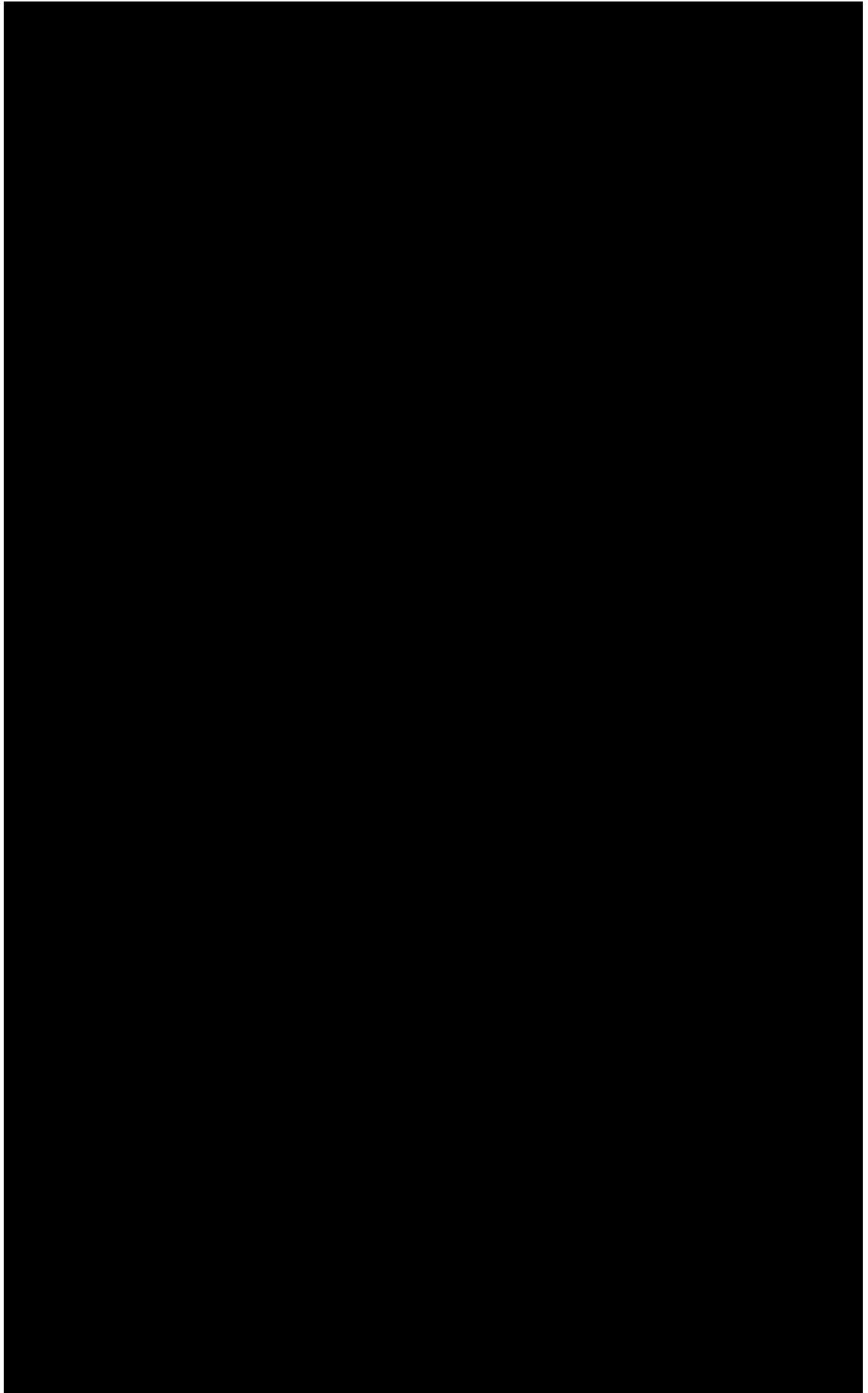
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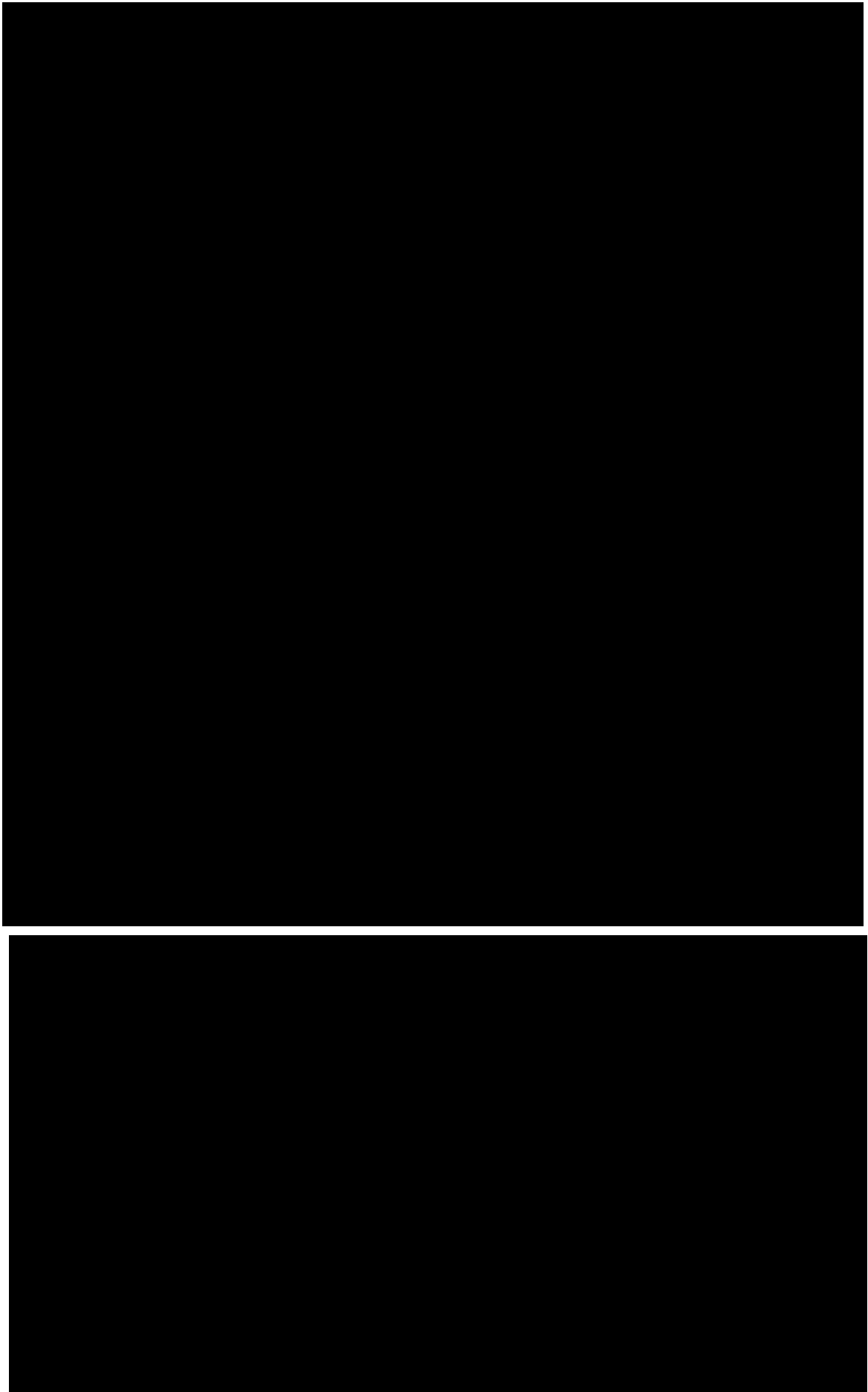
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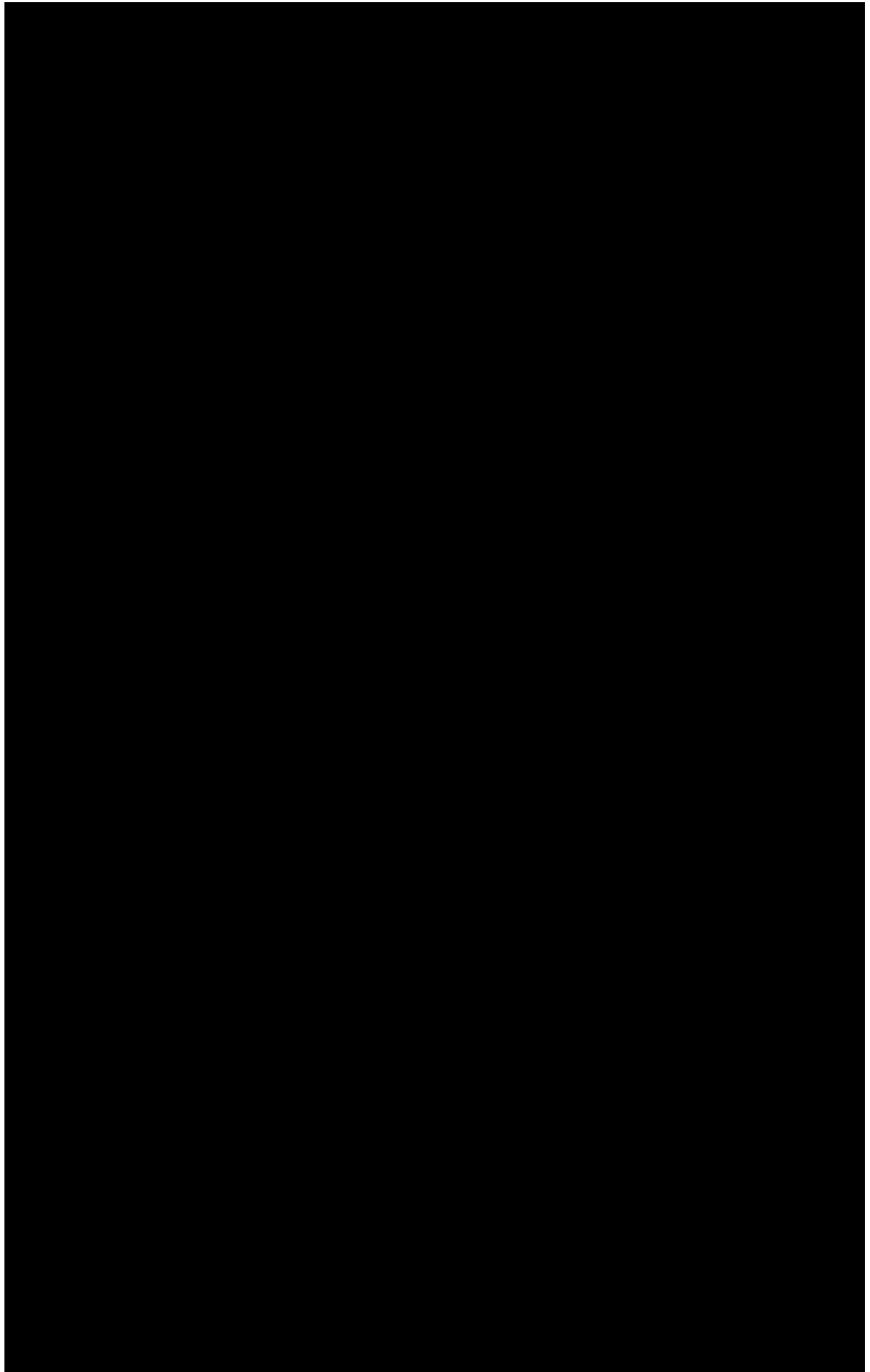
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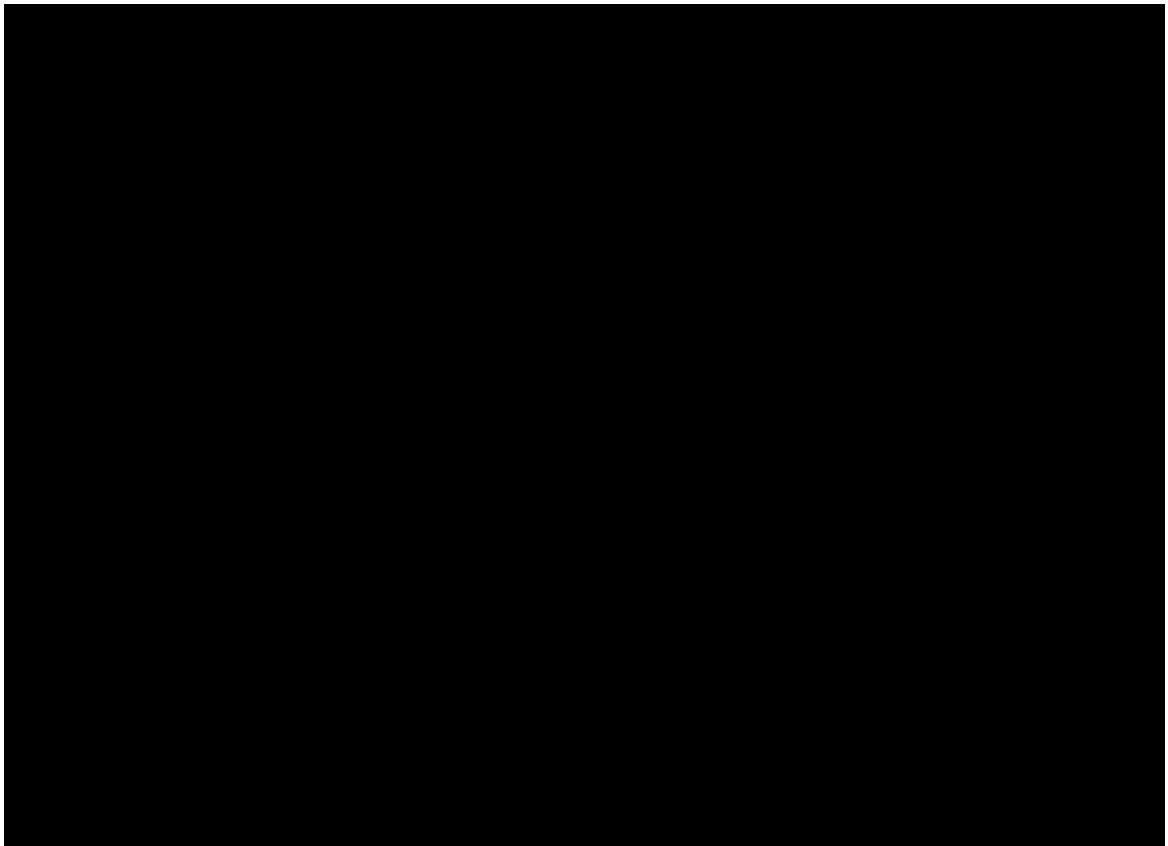
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BY MR. ELSNER:

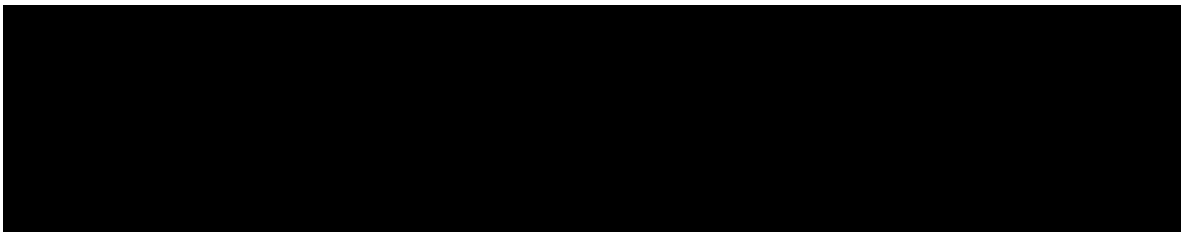
Q. And you would have supported that  
rescheduling program, right?

A. Yes.

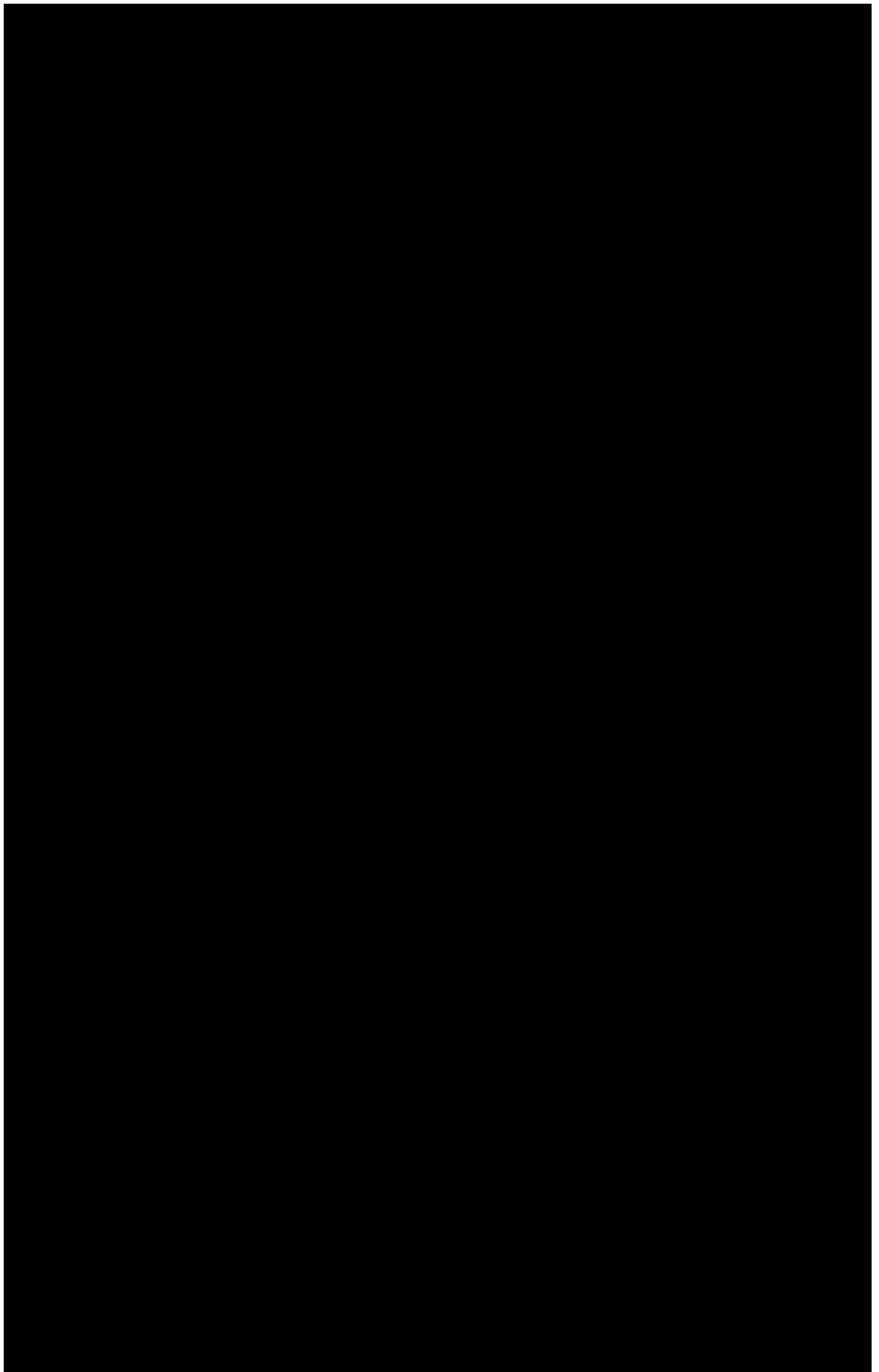
Q. And this is an e-mail from Pam Hinkle.

(WHEREUPON, a certain document was  
marked as CVS-Nicastro-051:  
8/26/14 e-mail string;  
CVS-MDLT1-000003065 - 000003066.)

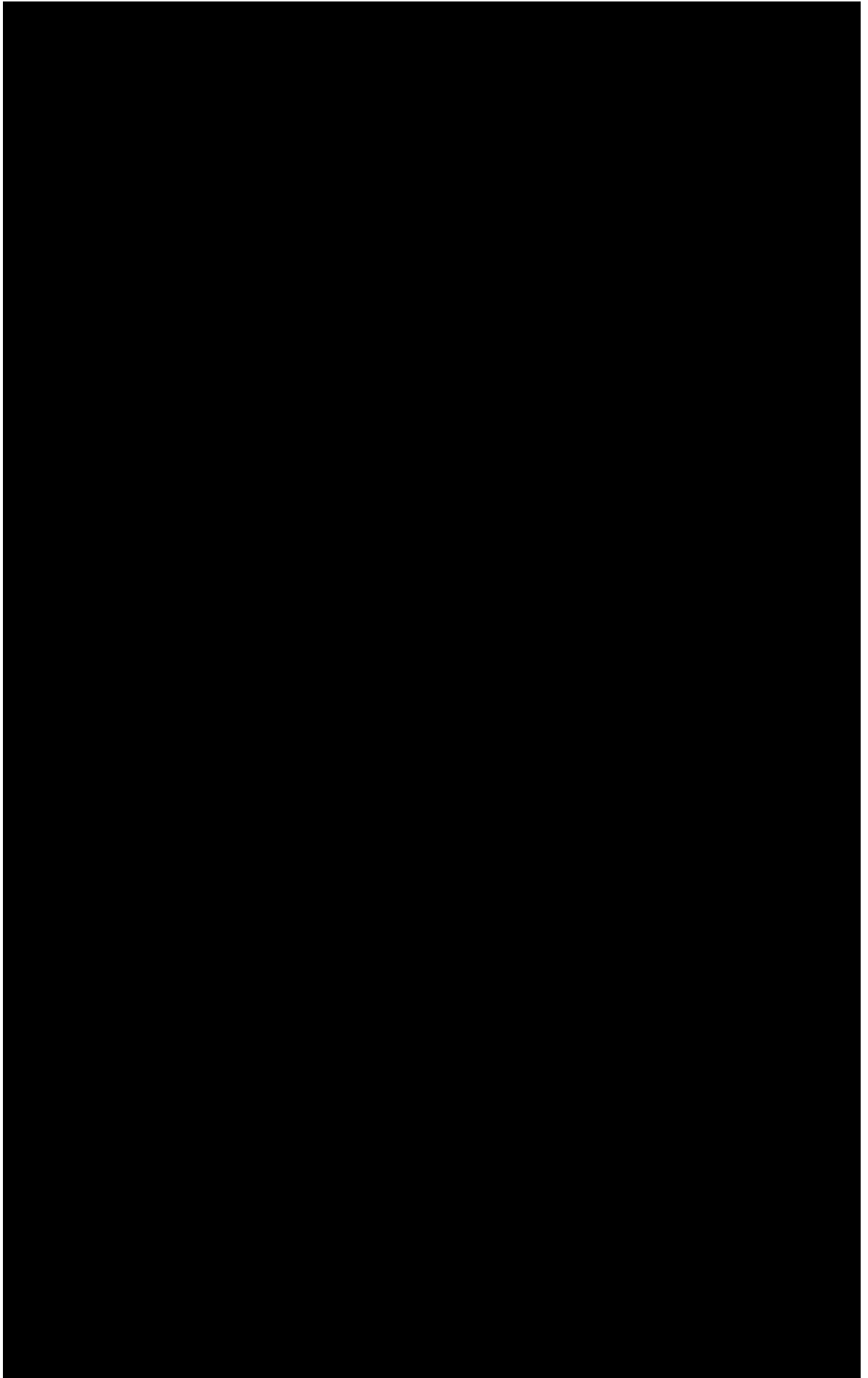
BY MR. ELSNER:



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15 Q. Okay. Prior to the rescheduling of  
16 hydrocodone by the Federal Government, the State of  
17 New York rescheduled hydrocodone, is that right?

18 MR. HYNES: Objection to form and based on  
19 Discovery Ruling 3. Go ahead.

20 BY THE WITNESS:

21 A. I'm not aware of that. I didn't know  
22 they did it before the Federal Government.

23 BY MR. ELSNER:

24 Q. Well, New York is in -- is New York in

1 the region for the Indianapolis distribution center  
2 for the distribution of hydrocodone or not?

3 A. No. Well, what time frame are we  
4 talking about?

5 Q. In 2012.

6 A. Okay. I apologize. Indianapolis would  
7 have been servicing a portion of New York at that  
8 time.

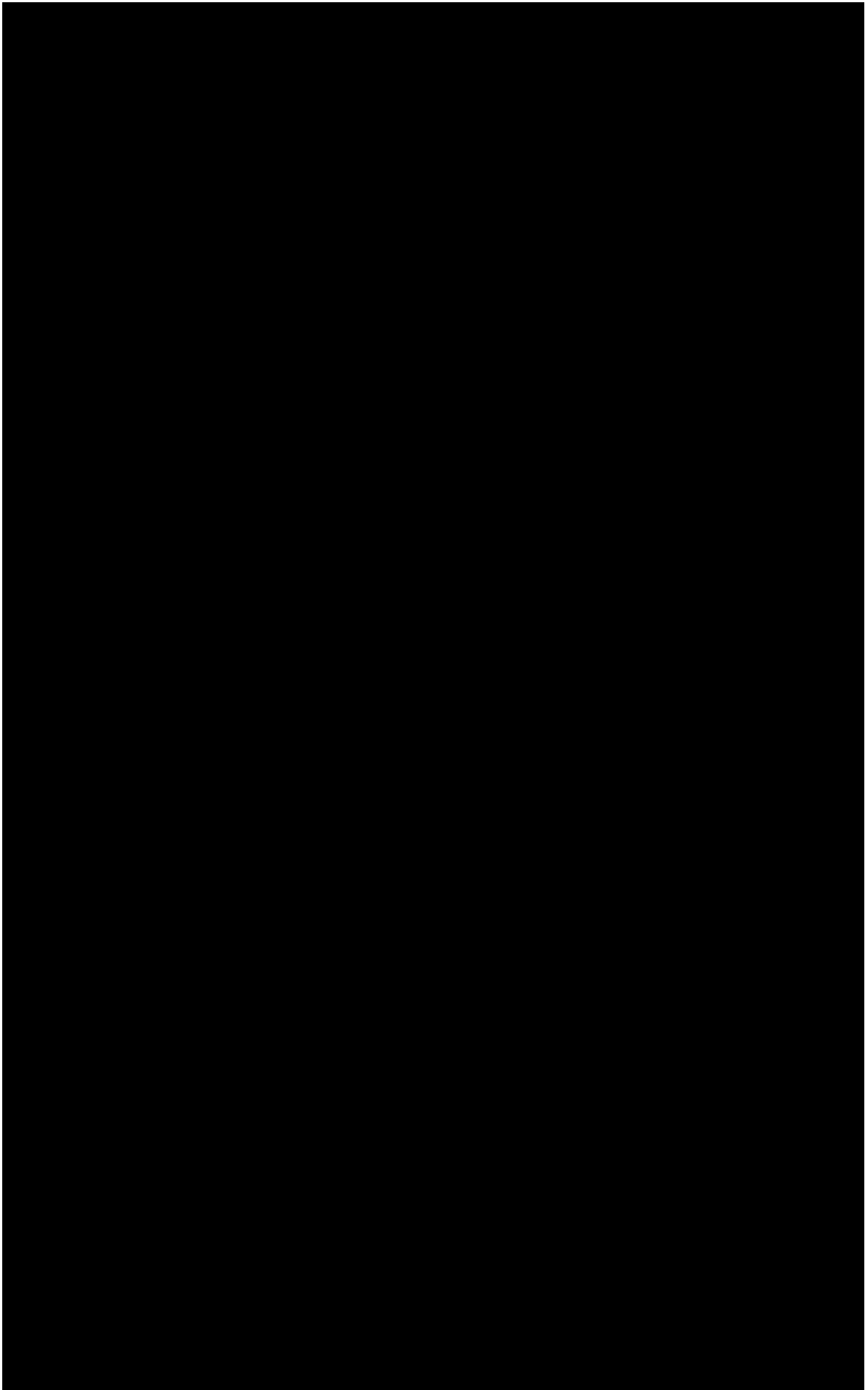
9 Well, let me take that back.

10 Yeah, I believe -- if we were still  
11 servicing Somerset, kind of qualify it with that,  
12 because our Chemung facility was coming up, I'm not  
13 sure of the dates, I believe that was 2010, 2011  
14 when that facility was built and came online, but  
15 I'm not sure when they took over all the New York  
16 stores.

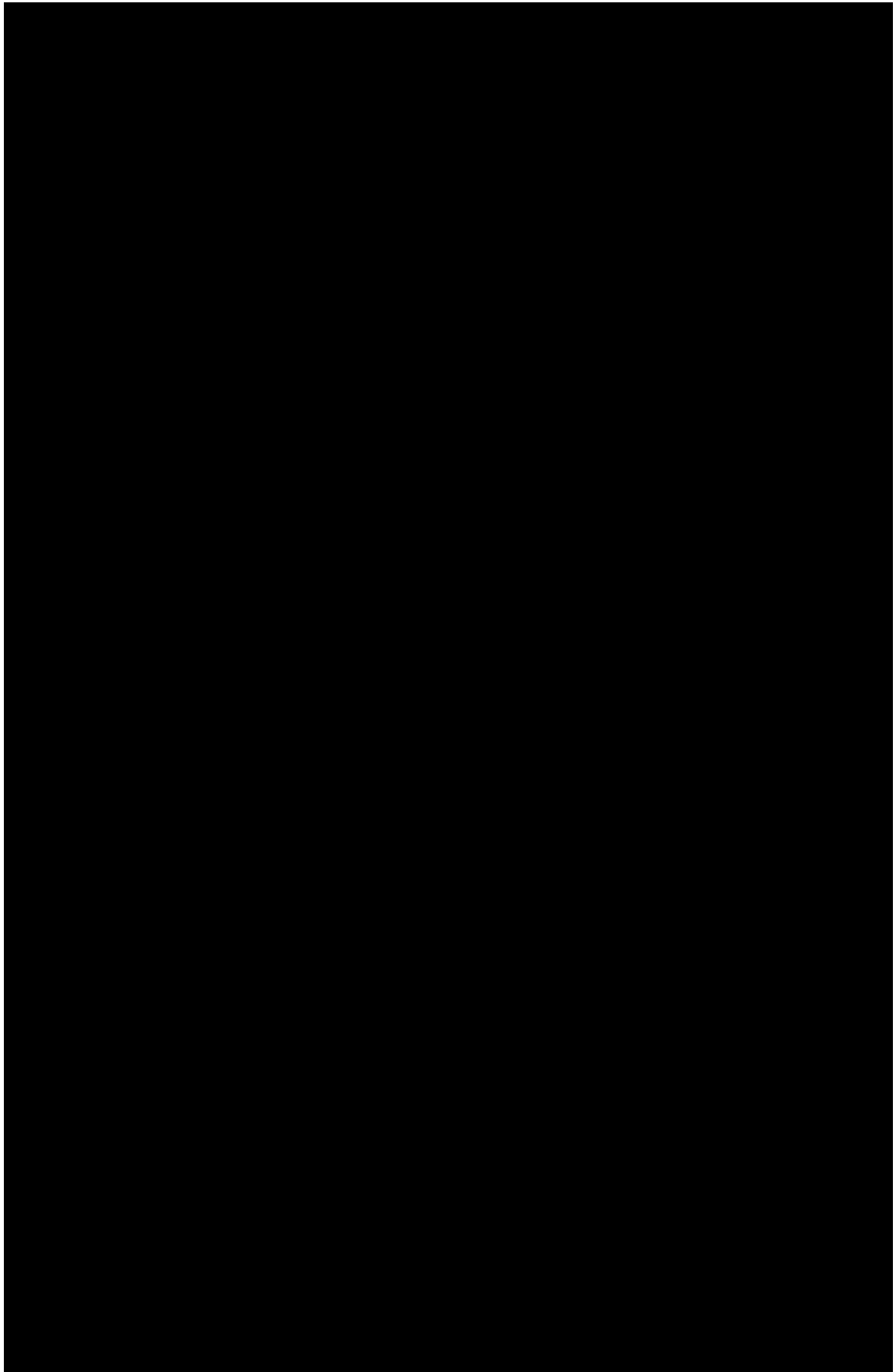
17 So, potentially we could have been  
18 servicing New York in 2012 out of Indianapolis.

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24 Q. The -- if we go back to Exhibit 46, the

1 very last -- if we go to the second, sort of the  
2 last phrase there starting with "Dan said."

3 And when Agent Gillen heard that CVS was  
4 no longer going to distribute hydrocodone, he said  
5 that the DEA's main concern with the SOM was  
6 hydrocodone. Is that right?

7 A. Yes.

8 Q. Okay. And then you wrote, "He didn't  
9 come right out and say it, but it was picked up by  
10 everyone in the room that he was establishing a  
11 reason not to escalate this," DEA investigation,  
12 "past a letter of admonishment based on that  
13 rescheduling." Correct?

14 MR. HYNES: Objection to form. I don't think  
15 that's exactly what it says. You may answer.

16 BY THE WITNESS:

17 A. Yeah, it was my opinion that he was --  
18 because hydrocodone is going to be going to a  
19 Schedule II, that there would be no reason to do  
20 anything more than a letter of admonishment. That  
21 hadn't been determined at that point.

22 BY MR. ELSNER:

23 Q. On the following page, you write in the  
24 very last sentence, "I'm pretty sure this is a

1 feeling out meeting to see if we were prepared to  
2 defend ourselves and Betsy made that crystal  
3 clear."

4 Is that right?

5 A. Correct.

6 Q. Meaning that she told Agent Gillen that  
7 if he proceeds past a letter of admonishment that  
8 she was going to request a meeting with his boss  
9 and CVS would fight the DEA in court like Walgreens  
10 did, correct?

11 MR. HYNES: Objection to form.

12 BY THE WITNESS:

13 A. Yeah, this was -- this was my opinion,  
14 that -- because the reason for the meeting, it was  
15 still to meet with his boss to discuss what they  
16 wanted to do, and in my opinion there was really no  
17 reason that we had the meeting that week other than  
18 maybe for some feeling out of what was -- what  
19 would be our position.

20 BY MR. ELSNER:

21 Q. I'm going to show you Exhibit 53.

22 (WHEREUPON, a certain document was  
23 marked as CVS-Nicastro-053:

24 12/31/15 letter from U.S. DOJ DEA

1 to CVS Indiana; CVS-MDLT1-000008014  
2 - 000008015.)

3 BY MR. ELSNER:

4 Q. This is a letter from Daniel Gillen from  
5 the DEA, is that right?

6 A. Yes.

7 Q. The signature line?

8 A. Yes.

9 Q. And the date of this letter is  
10 December 31, 2015, correct? It's next to his  
11 signature.

12 A. Oh. Yes.

13 Q. And this is after the hydrocodone  
14 products had been rescheduled, correct?

15 A. Correct.

16 Q. So, the DEA left this investigation open  
17 from July of 2013 until this final letter in  
18 December of 2015, is that right?

19 MR. HYNES: Objection to form.

20 BY THE WITNESS:

21 A. That's correct.

22 BY MR. ELSNER:

23 Q. And Agent Gillen found and the DEA found  
24 that as a result of the investigation that there

1 was a violation of the Controlled Substances Act.

2 Do you see that at the end of the first  
3 paragraph?

4 A. Yes.

5 Q. Okay. And you're aware, are you not,  
6 that he found and the DEA determined that there was  
7 a "Failure to design and maintain a system to  
8 detect suspicious and report suspicious orders for  
9 Schedule III to V controlled substances" as  
10 required under the Controlled Substances Act,  
11 correct?

12 A. Correct.

13 Q. And -- okay.

14 MR. ELSNER: At this time I'm going to go off  
15 the record.

16 THE VIDEOGRAPHER: We are going off the record  
17 at 4:17.

18 (WHEREUPON, a recess was had  
19 from 4:17 to 4:22 p.m.)

20 THE VIDEOGRAPHER: We're back on the record at  
21 4:22.

22 EXAMINATION

23 BY MR. DeROCHE:

24 Q. Good afternoon, Mr. Nicastro. My name

1 is Jim DeRoche. I just have a few follow-up  
2 questions for you based on earlier testimony.

3 First of all, when you started with CVS,  
4 you were in Somerset, Pennsylvania?

5 A. Correct.

6 Q. Is that correct? What is that facility?

7 A. It's a distribution center for CVS.

8 It's a smaller than Indianapolis.

9 Q. What did it distribute?

10 A. It distribute front store product  
11 basically. So, any product, almost any product you  
12 see in a CVS store.

13 Q. So, the front of store products included  
14 things like ephedrine and pseudoephedrine, is that  
15 correct?

16 A. Pseudo -- what time frame are we talking  
17 about?

18 Q. The time frame when you were working  
19 there.

20 MR. HYNES: I'm objecting based on Discovery  
21 Ruling 2.

22 BY MR. DeROCHE:

23 Q. You can answer.

24 A. I -- I don't remember if that was an

1 item that we carried or an item that was delivered  
2 to us from Indianapolis.

3 So, Indianapolis delivered our pharmacy  
4 product each day, but they also delivered what we  
5 call centrally warehoused items, and that's about  
6 10,000 items that they carry that we don't carry.  
7 And they would deliver those.

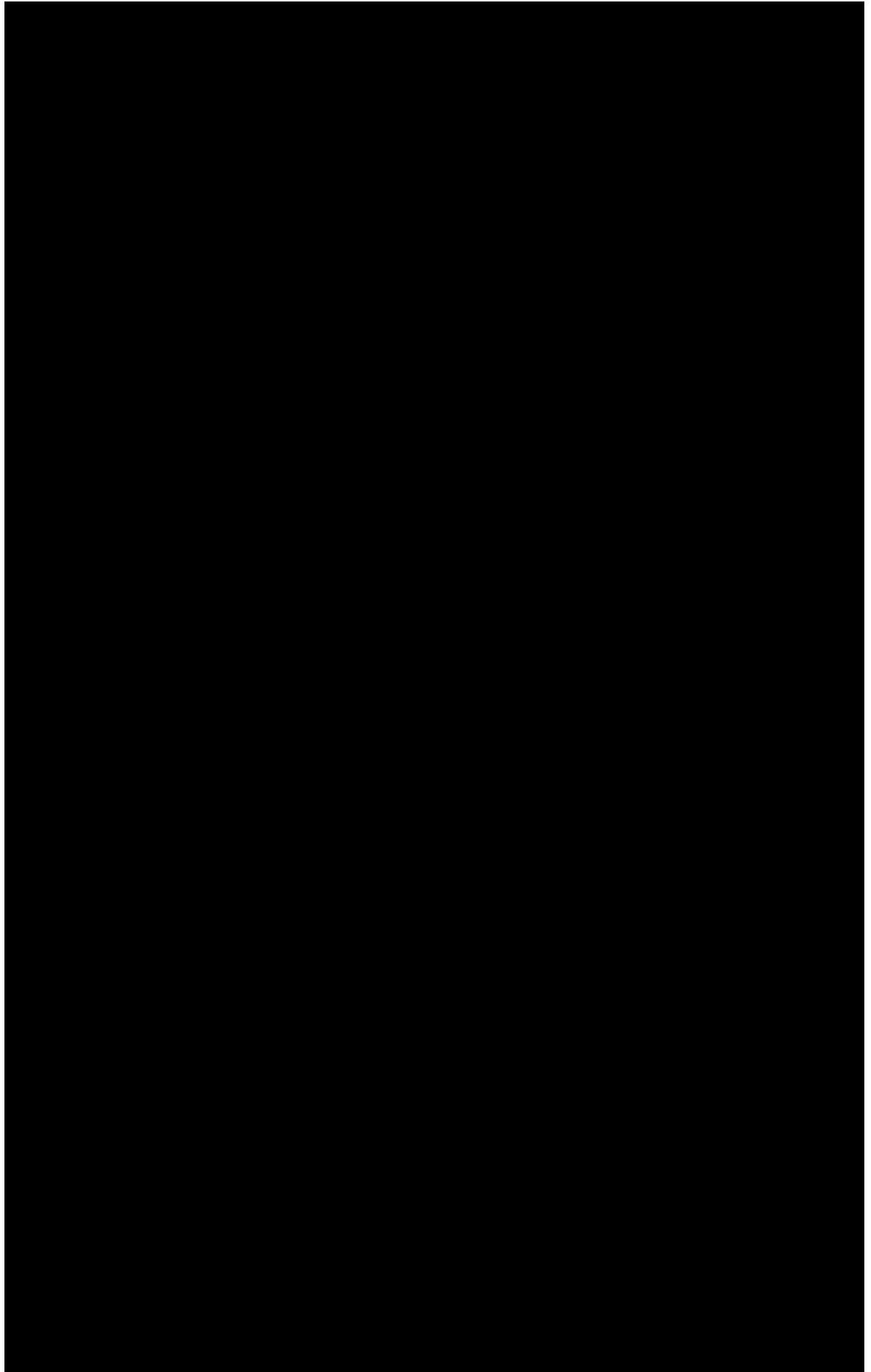
8 And I -- I don't remember if the  
9 pseudoephedrine was part of our inventory or part  
10 of Indianapolis' inventory.

11 Q. Well, I guess --

12 A. Before it was regulated I think is what  
13 we are talking about?

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4 Q. And you understand what a license is,  
5 right?

6 A. I do.

7 Q. You have a driver's license, right?

8 A. Correct.

9 Q. You have to -- you understand you have  
10 to meet certain requirements in order to keep your  
11 license, correct?

12 A. Yes.

13 Q. Just like a driver's license, the DEA  
14 license is the same thing, right?

15 A. Correct.

16 Q. Okay. And the requirements included the  
17 design and operation of a system that was intended  
18 to disclose suspicious orders to the DC, correct?

19 MR. HYNES: Objection to form.

20 BY THE WITNESS:

21 A. That's correct.

22 BY MR. DeROCHE:

23 Q. And that requirement was in place when  
24 you took over at Indianapolis, right?

1           A.       Yes.

2           Q.       And that is, in fact, one of the primary  
3       requirements for the Indianapolis DC to keep its  
4       DEA license, correct?

5           MR. HYNES:   Objection to form.

6       BY THE WITNESS:

7           A.       There were many -- there are many  
8       requirements for us to keep our -- keep our  
9       license.

10       BY MR. DeROCHE:

11          Q.       That was an important requirement, was  
12       it not?

13          MR. HYNES:   Objection to form.

14       BY THE WITNESS:

15          A.       It's important as there were many  
16       important requirements.

17       BY MR. DeROCHE:

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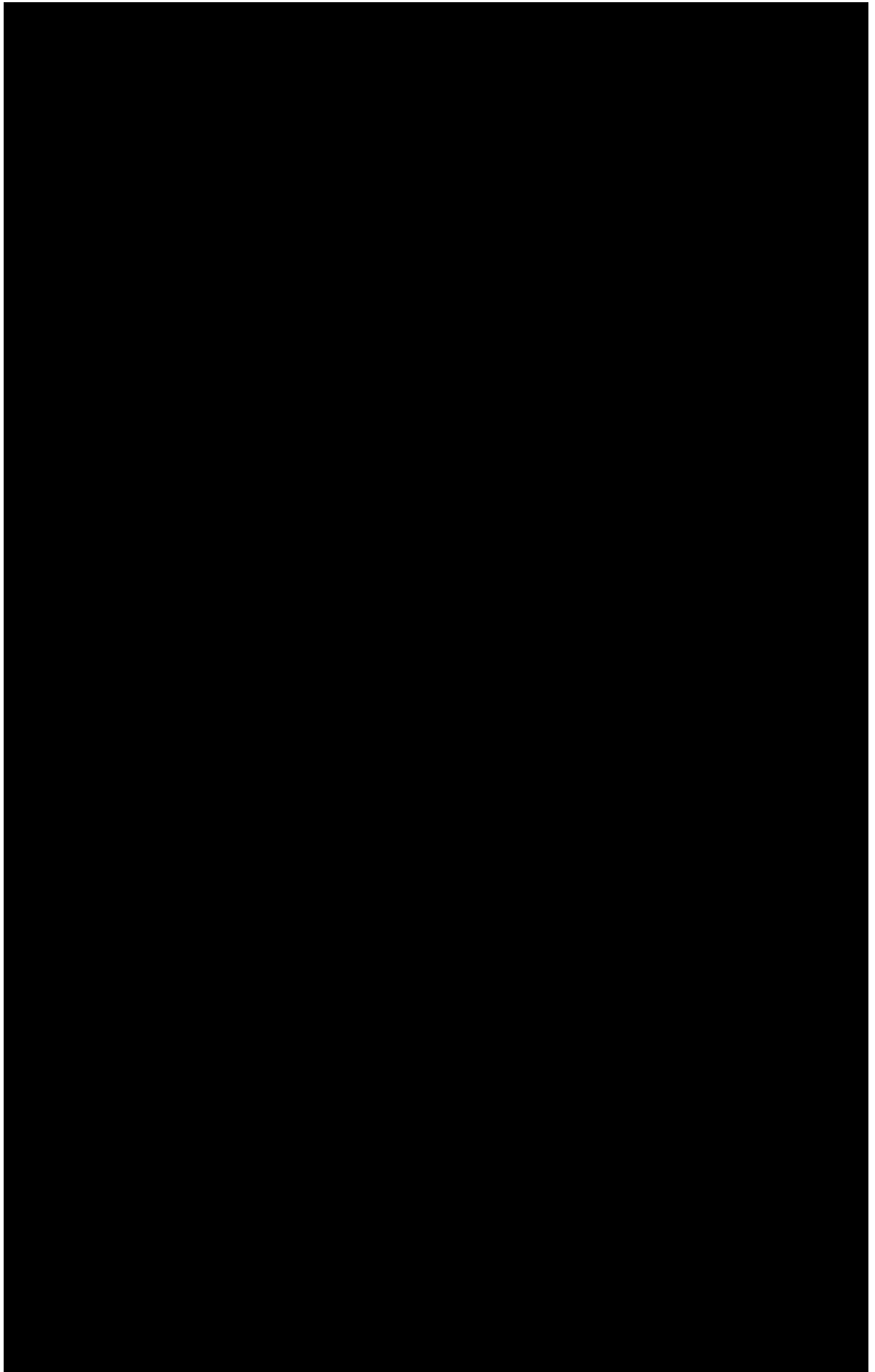
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1 process for you, right?

2 A. It was a daylight process, day shift  
3 process.

4 Q. You didn't get orders overnight and have  
5 to fill them overnight?

6 A. No. No, we only filled control drugs on  
7 one shift in an eight-hour period.

8 Q. Okay. And that was during the day?

9 A. Yes.

10 Q. And you were fulfilling orders from a  
11 thousand-odd stores in the Indianapolis  
12 distribution center, right?

13 A. Per week, yes.

14 Q. Per week. Well, every day, right?

15 MR. HYNES: Objection.

16 BY THE WITNESS:

17 A. No, it was a thousand stores -- a little  
18 over a thousand stores in total.

19 BY MR. DeROCHE:

20 Q. In total that you were servicing?

21 A. Correct.

22 Q. Right. And how many folks worked in the  
23 control cage at the distribution center in  
24 Indianapolis?

1 A. Approximately eight.

2 Q. And so you had eight of these pickers  
3 and packers at any one time, is that correct?

4 A. Yes.

5 Q. Did they all work every day or were  
6 there three or four and you spread out the shifts?

7 A. No. We only ran that department on one  
8 shift, day shift, and those eight folks were our  
9 controlled substance pickers and packers and  
10 checkers.

11 Q. Okay. And in 2008 when you came in, how  
12 long had those folks been working for CVS that were  
13 working in that position?

14 MR. HYNES: Objection to form.

15 BY THE WITNESS:

16 A. I can't tell you the -- all their  
17 seniority dates at that point. What I can tell you  
18 is most of those folks were more tenured  
19 associates. And even today I still have one -- two  
20 associates in that department that are still there  
21 today from when I came in in 2008.

22 BY MR. DeROCHE:

23 Q. And, so, the process that they followed  
24 when they were picking these controlled substances

1     that you were then going to ship to Somerset, what  
2     was the actual process that they followed?

3                 Why don't you explain that to me. I'm  
4     talking about 2008.

5                 A.     They would -- they would go through and  
6     pick the orders and they would review the orders  
7     for anything of unusual size.

8                 These were our experts. They were in  
9     the cage every single day. They picked these  
10    orders every single day. And they are going to be  
11    the best -- have the most knowledge as to whether  
12    an order seems unusual size or pattern.

13                Q.     For a particular store, in other words,  
14    they had to have a knowledge of what the store had  
15    ordered in the past for these thousand stores?

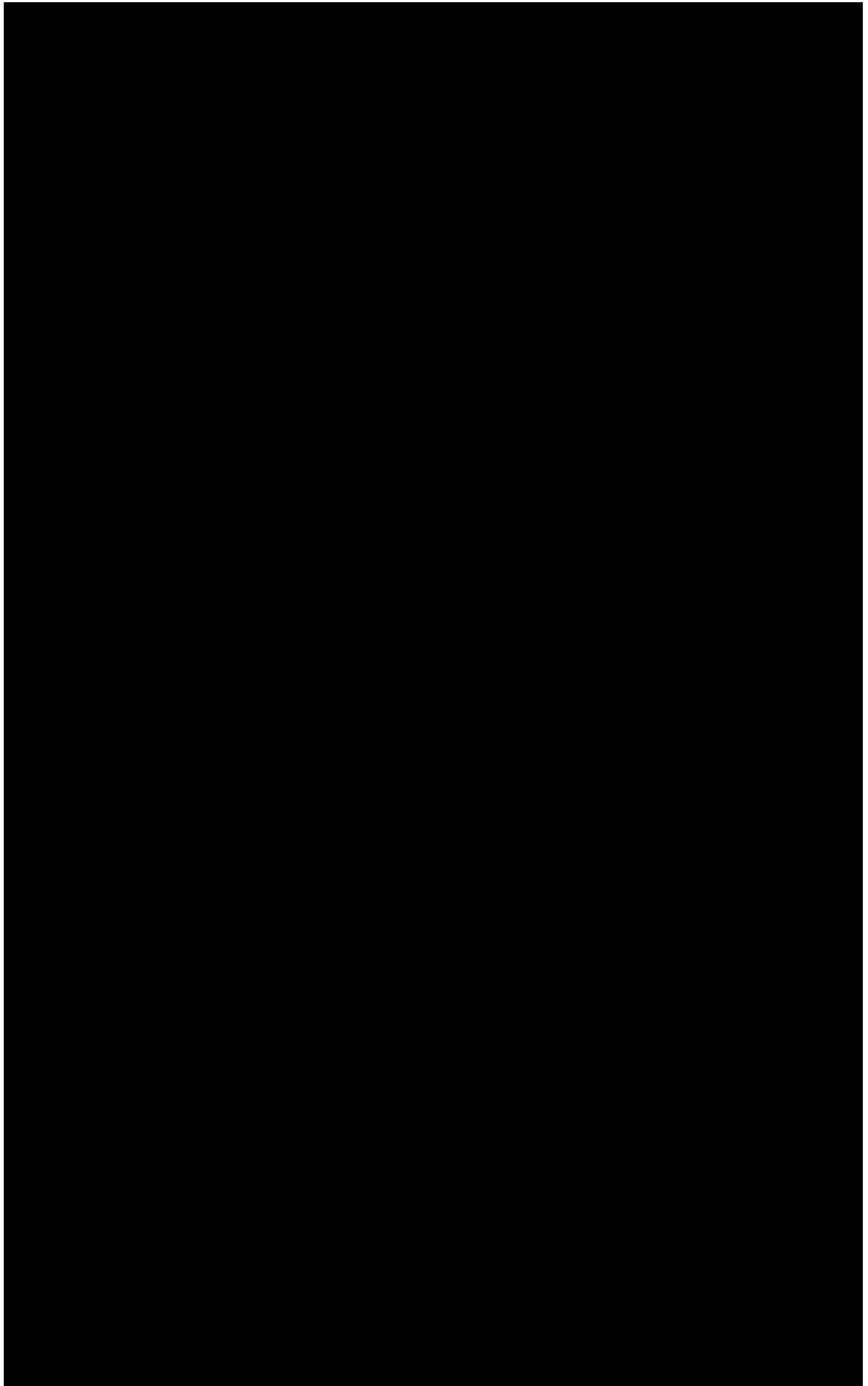
16                A.     They had a general knowledge of how many  
17    bottles they would pick for any particular store.

18                Q.     I mean, you have a wide range of  
19    controlled substances that would go to your stores,  
20    wouldn't you?

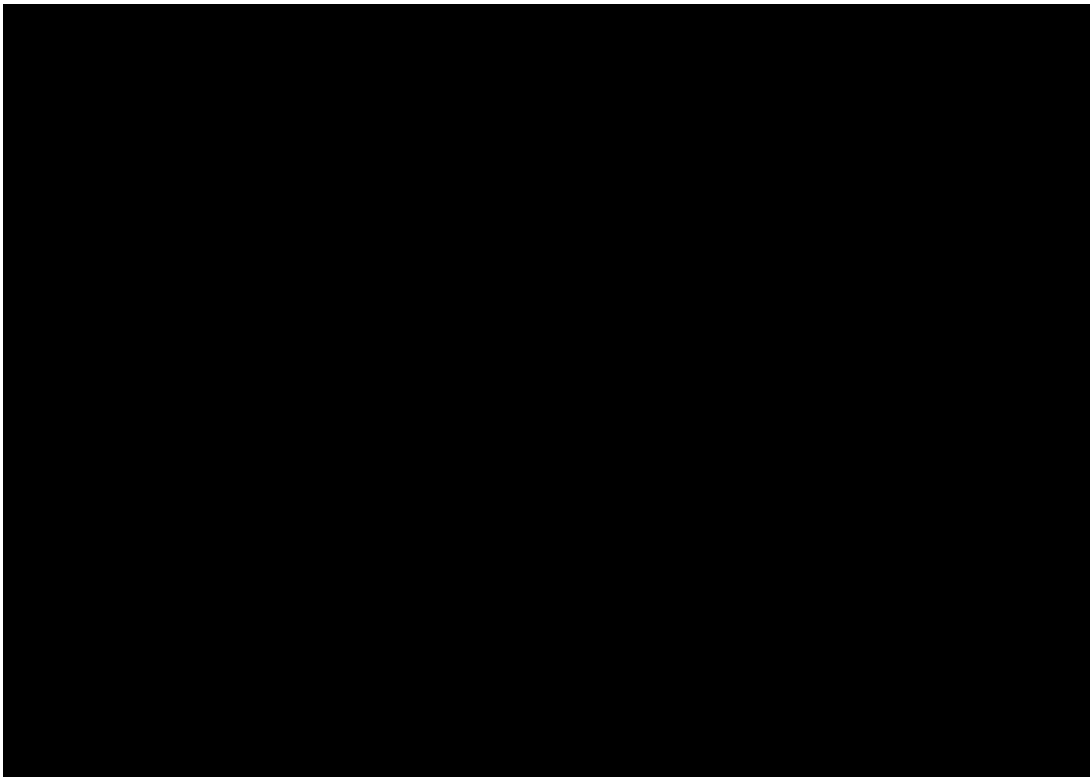
21                A.     It's a small number of items that we  
22    have in our control cage.

23                Q.     I'm not talking about the items. I'm  
24    talking about the range of the number of orders

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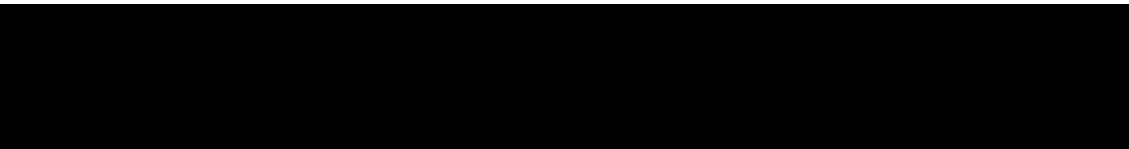
Q. What did they have access to in terms of information that would help them be efficient spotters of suspicious orders as required by the DEA?

MR. HYNES: Objection to form.

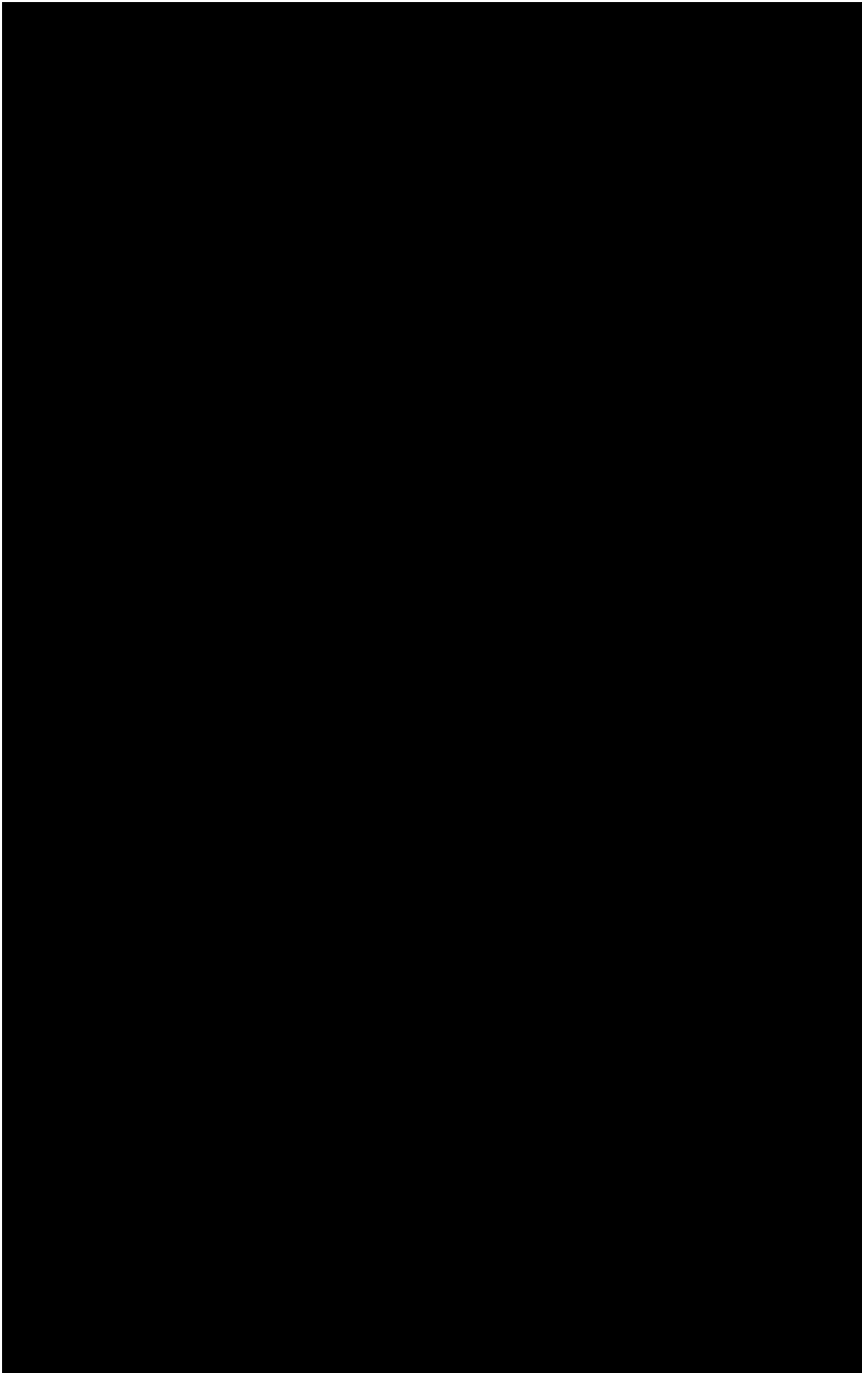
BY MR. DeROCHE:

Q. What did they have?

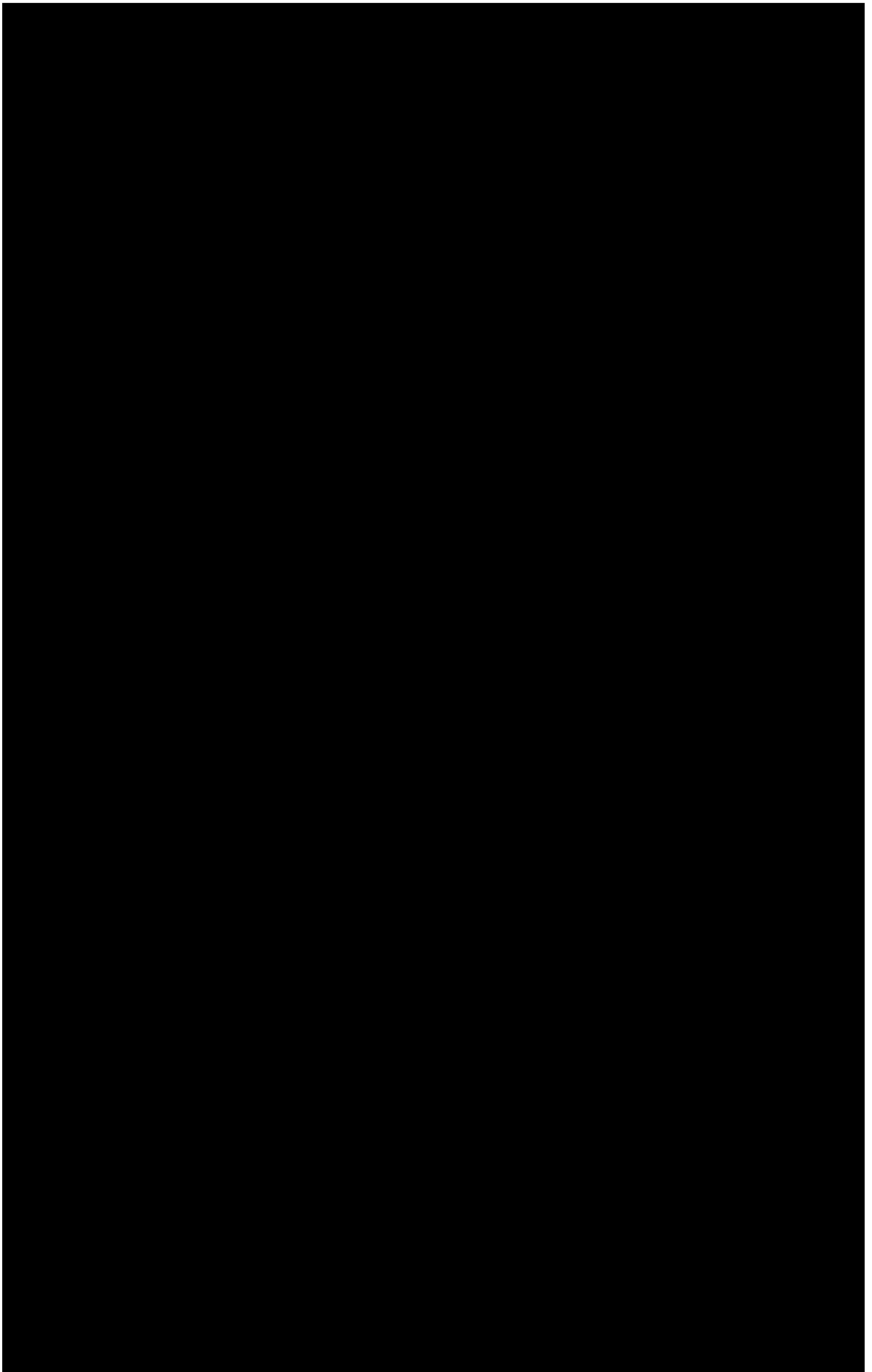
A. Their knowledge. We relied on them to use their experience to flag anything that looked suspicious to them, and they would -- they would escalate those to their pharmacy supervisor or manager, and they would take it from there.



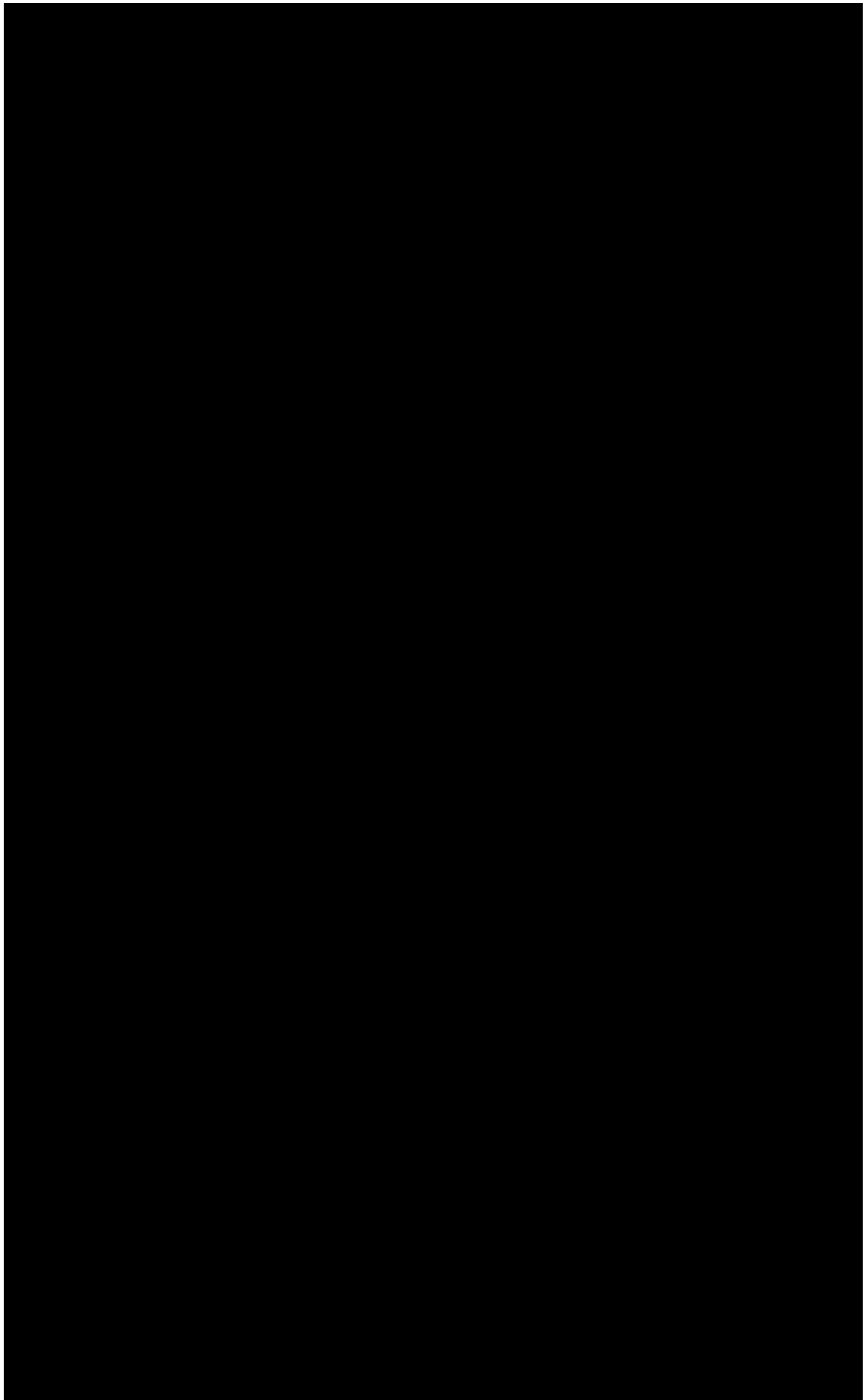
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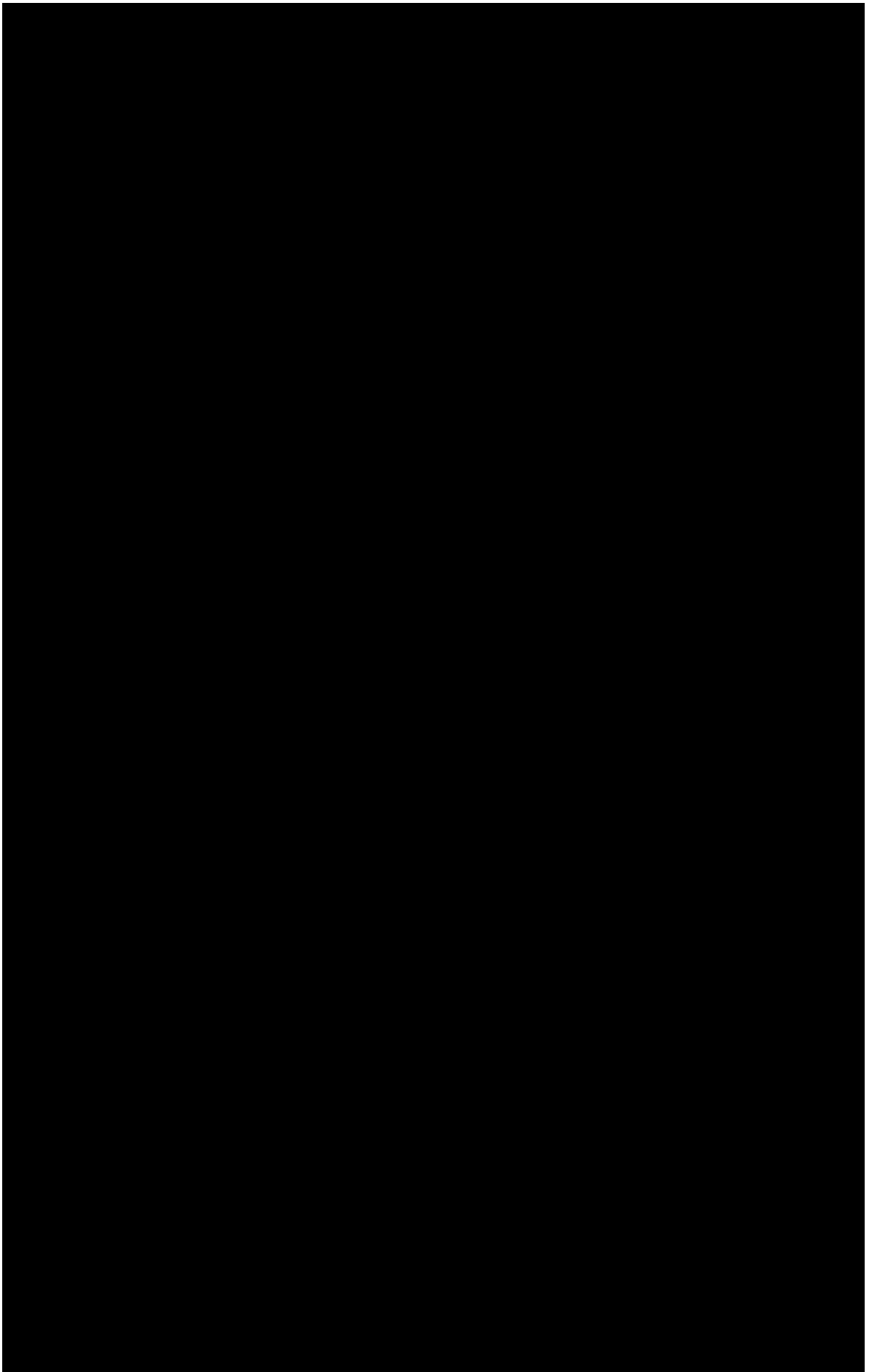
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17 Q. You can answer, sir.

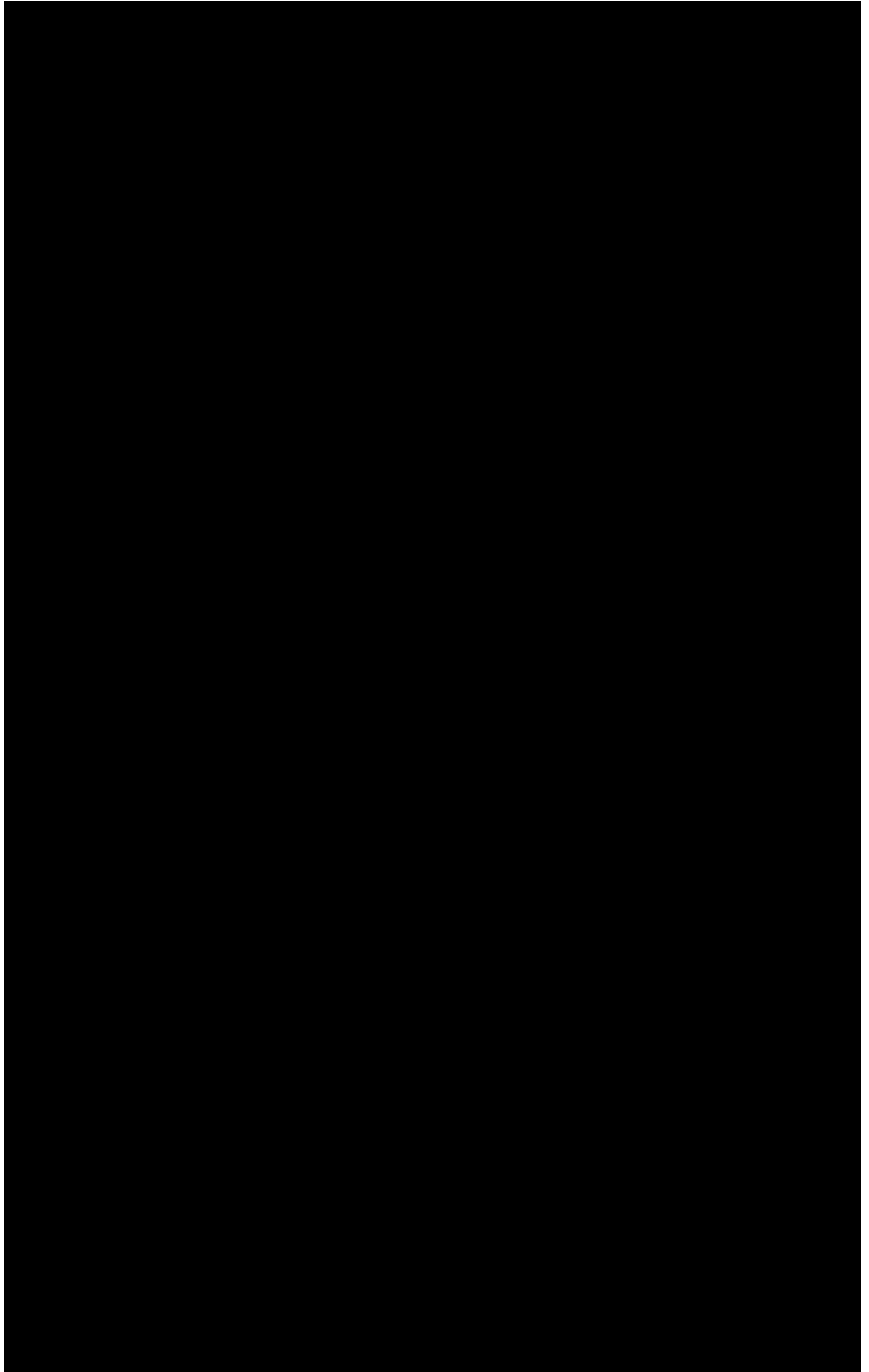
18 A. Our -- if patterns or frequencies were  
19 to change, that would have been flagged with our --  
20 our stores order once a week with the exception of  
21 a handful of stores that order twice a week. So,

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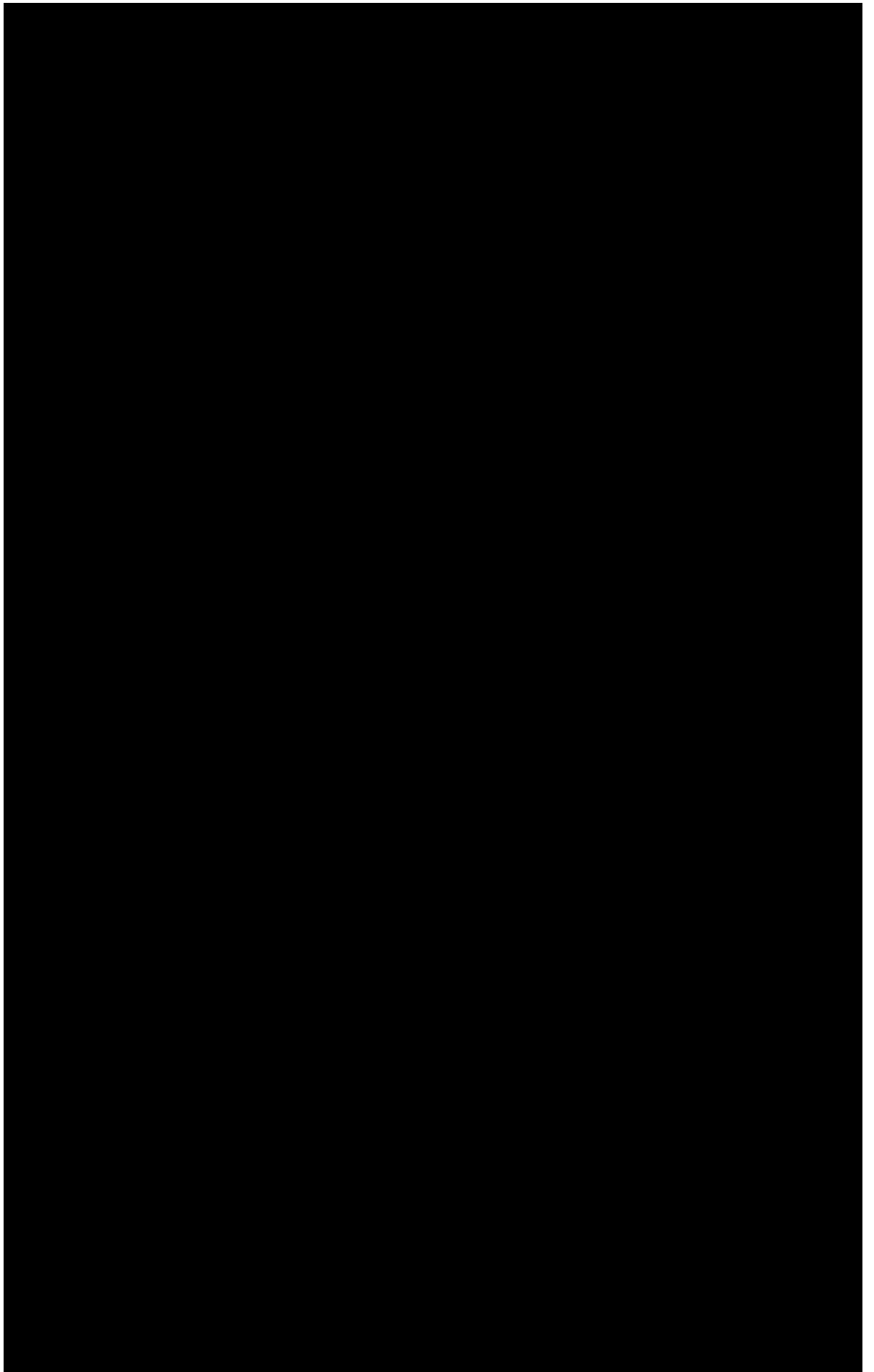
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1 BY MR. DeROCHE:

2 Q. Were the pickers and packers provided  
3 any kind of training, specific training, as to  
4 suspicious order monitoring and how to flag orders?

5 MR. HYNES: Objection; asked and answered --

6 BY MR. DeROCHE:

7 Q. That you can recall.

8 MR. HYNES: -- by Mr. Elsner. Go ahead.

9 BY THE WITNESS:

10 A. We -- they were trained when they went  
11 into the department by the pharmacy supervisor or  
12 manager as to what to look for and then with the  
13 other experienced pickers in that area.

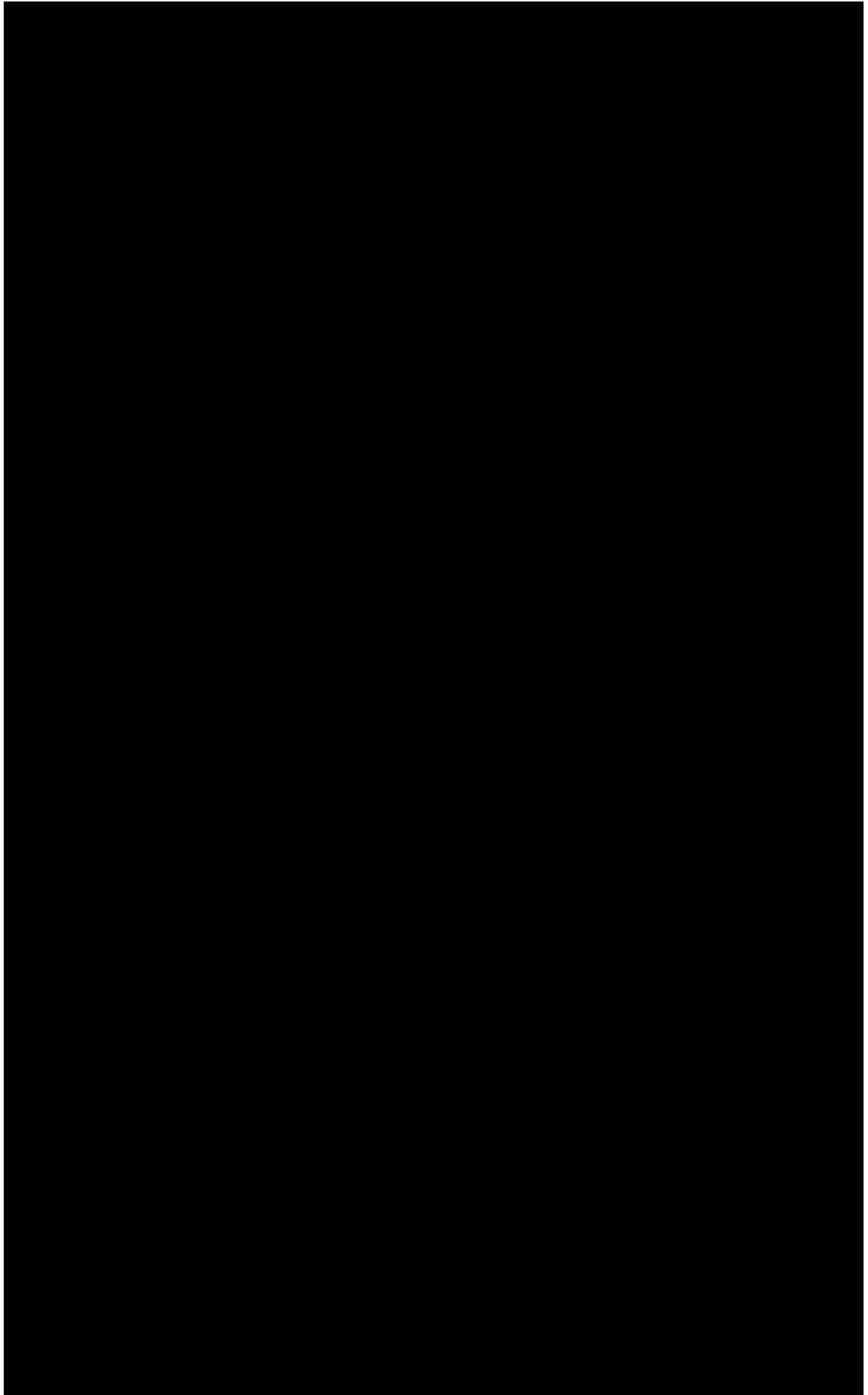
14 So, if we had a new person go in, they  
15 would, you know, learn from their -- from the --  
16 what we showed them from the pharmacy supervisor or  
17 manager and then from the rest of the team that was  
18 in there.

19 Again, it was a very small team of, you  
20 know, tenured folks that knew the process.

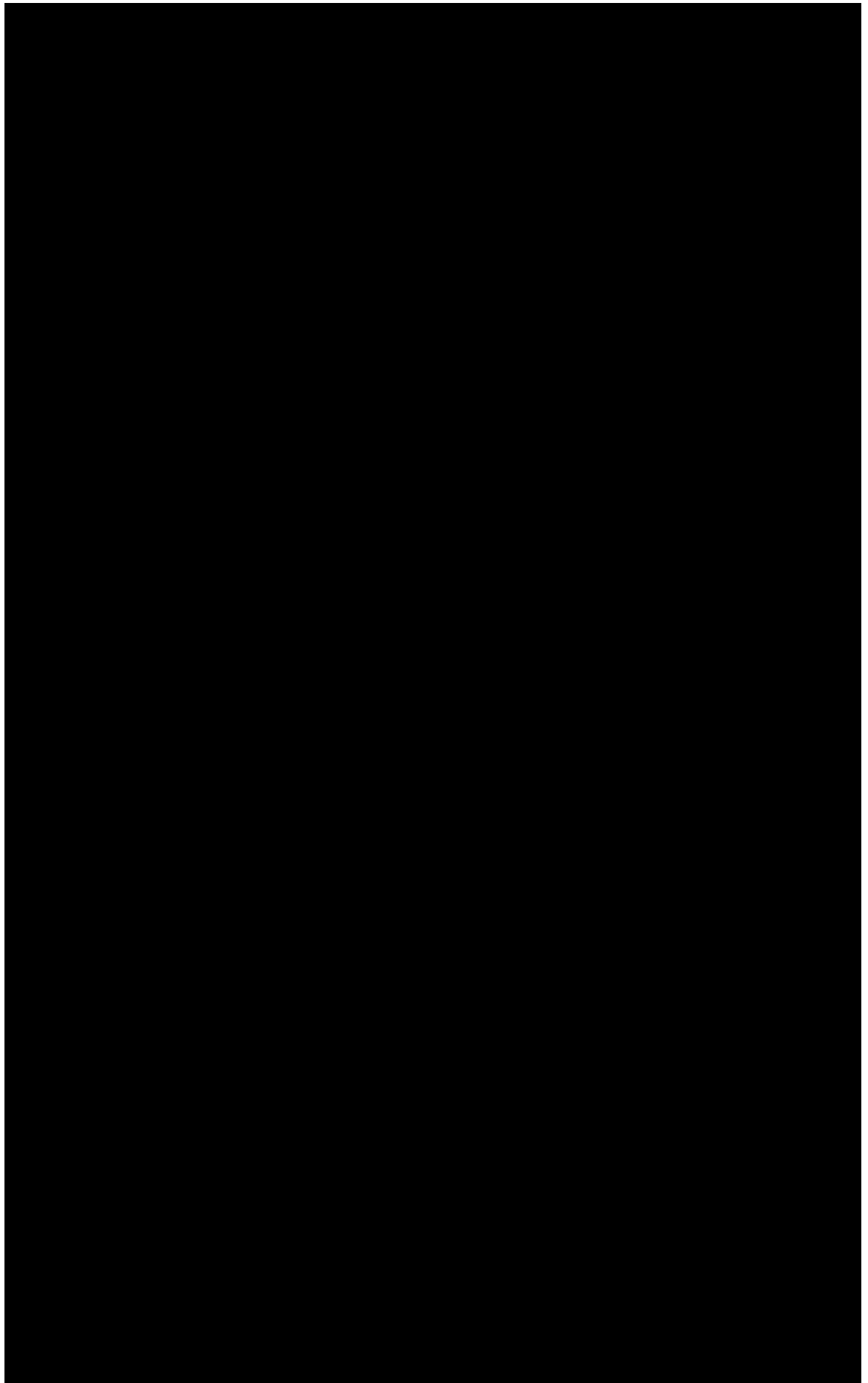
21 BY MR. DeROCHE:

22 Q. Was there any kind of quality control  
23 that was undertaken with respect specifically to  
24 the suspicious order monitoring activities of the

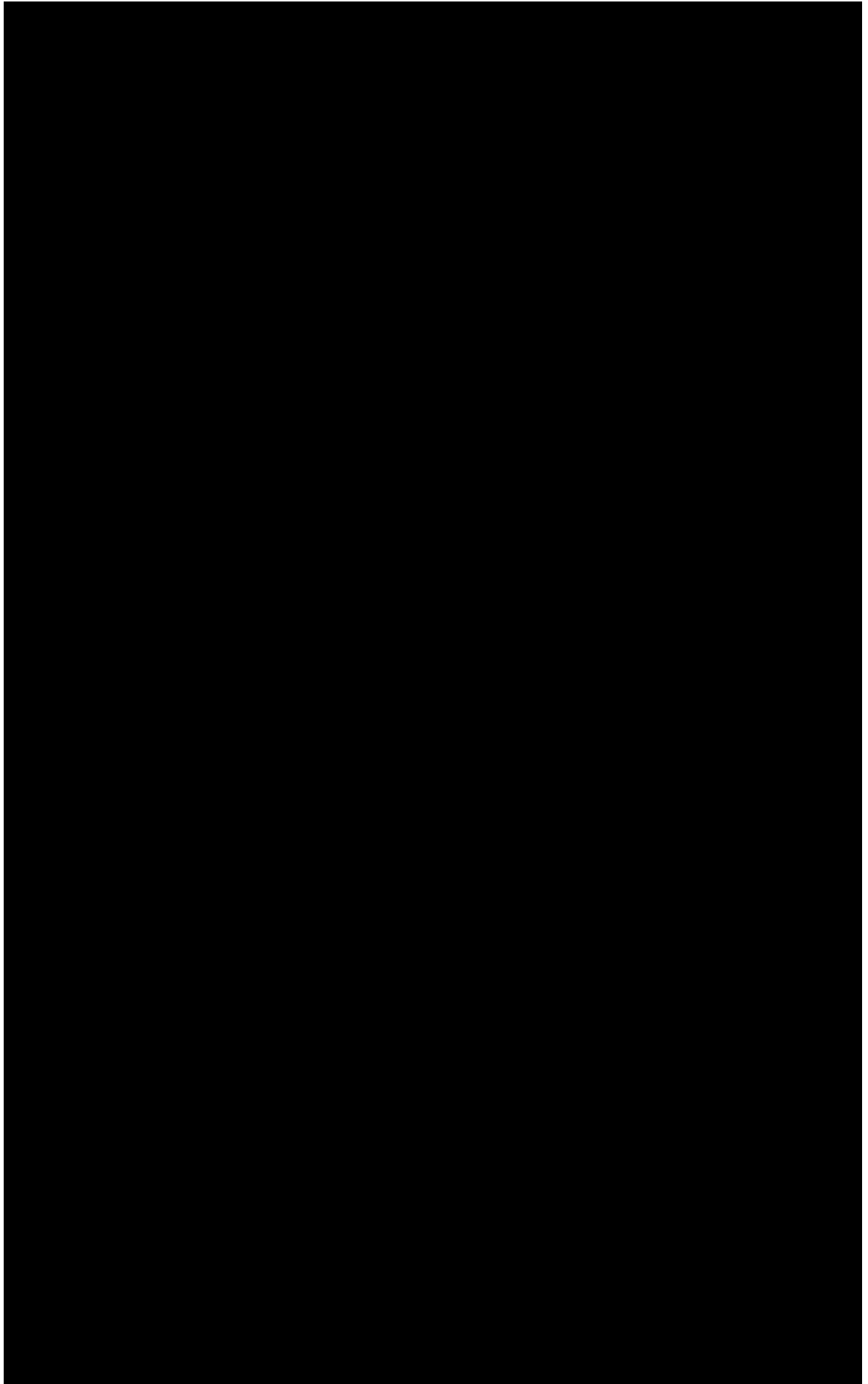
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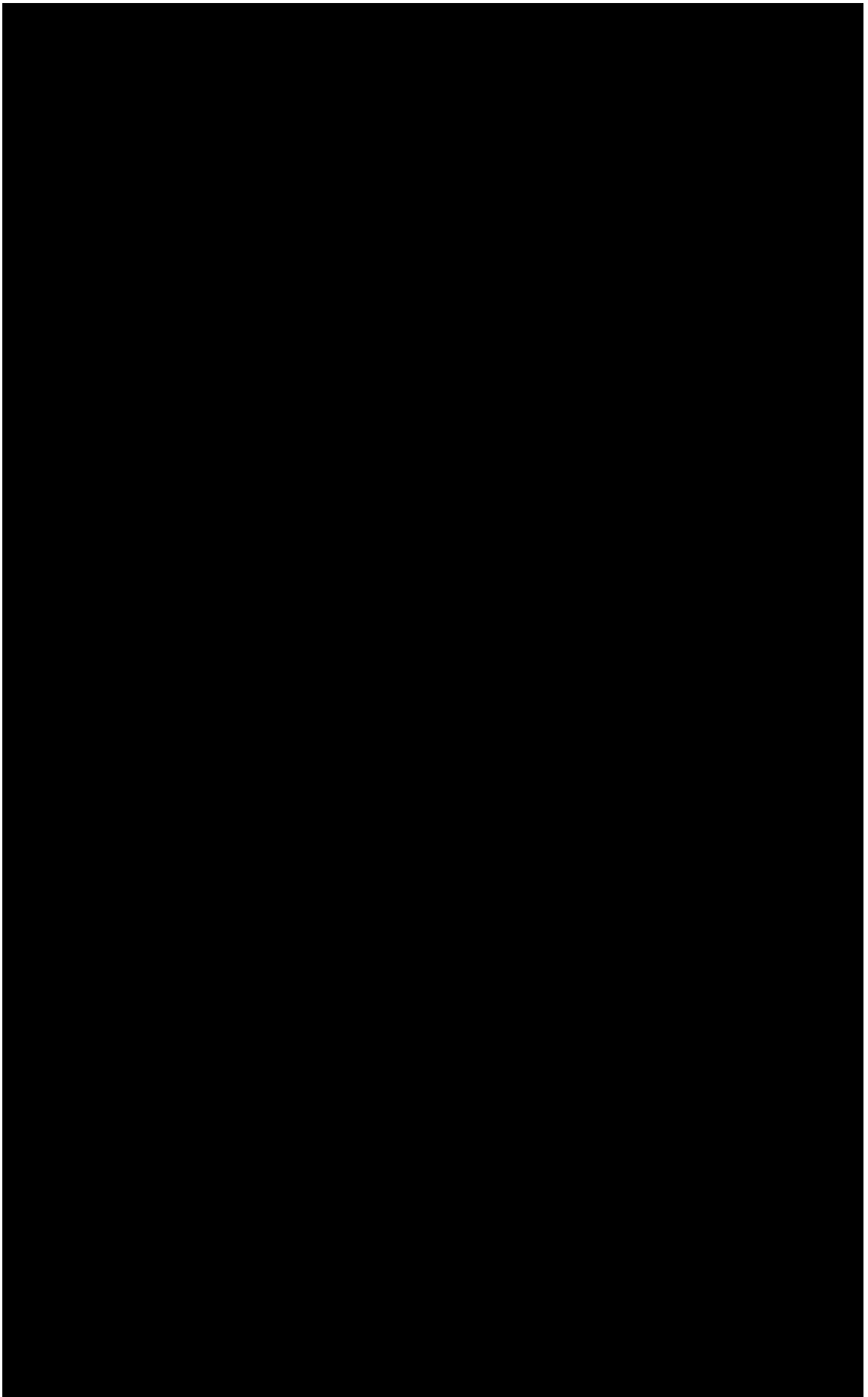
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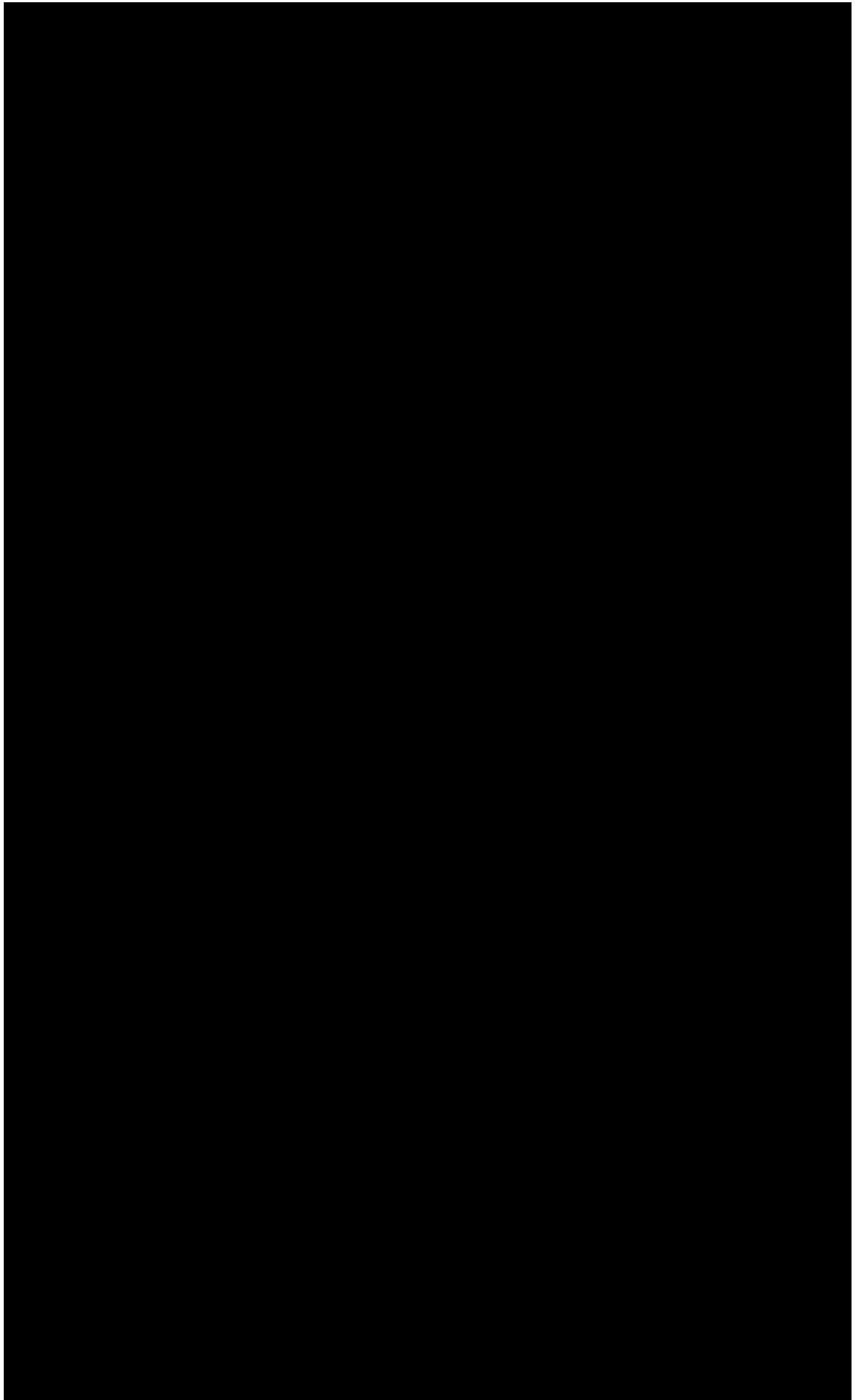
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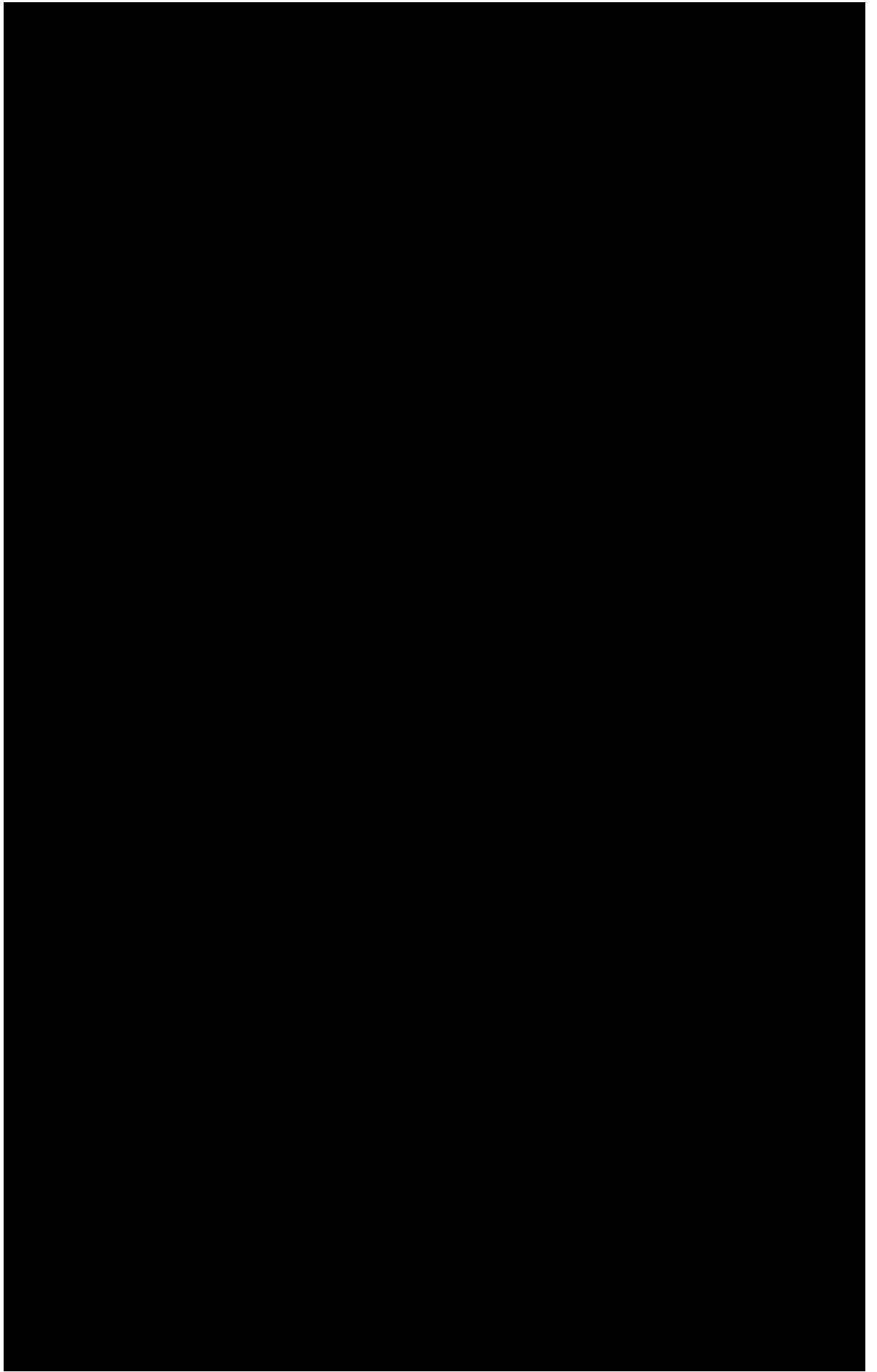
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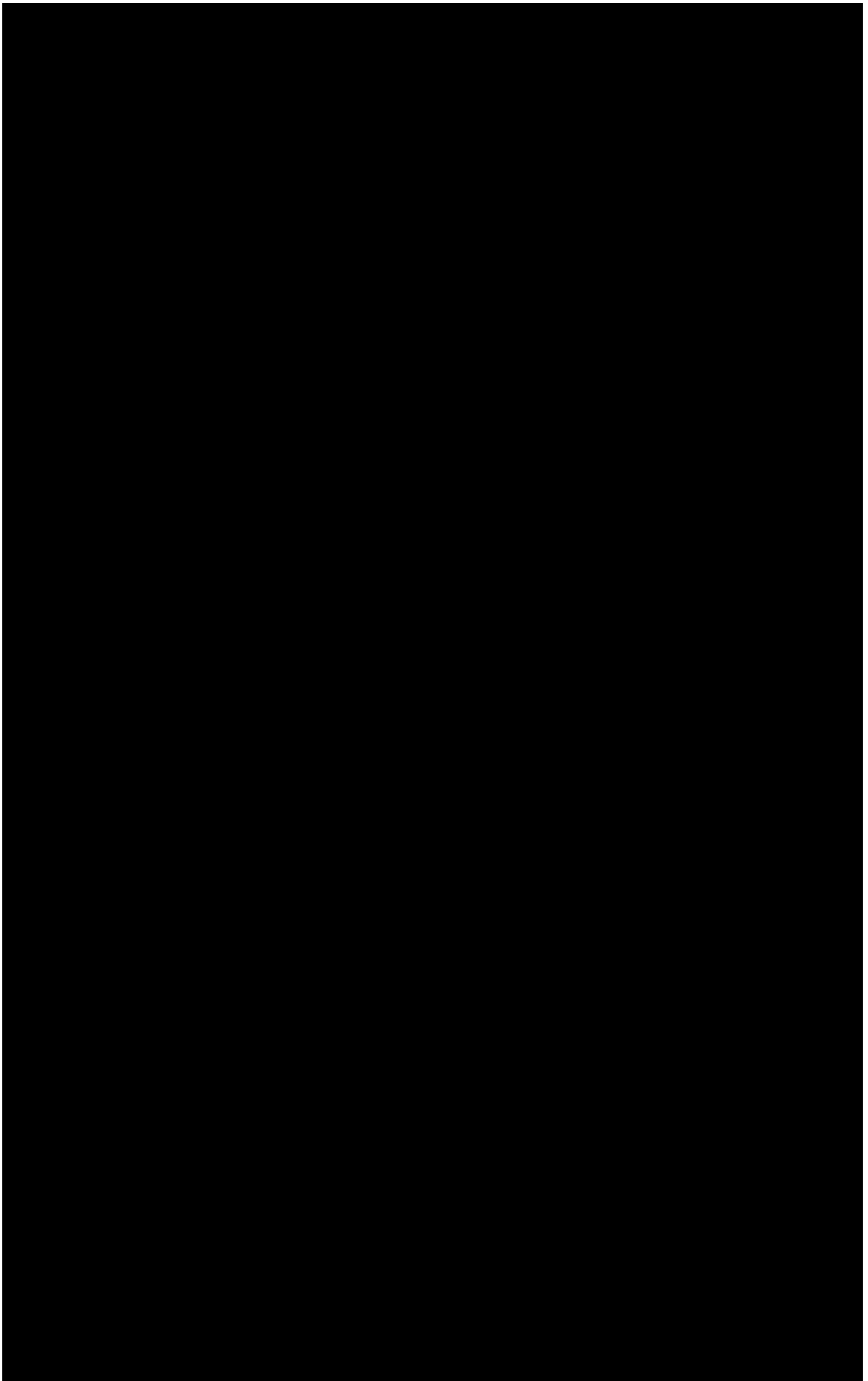
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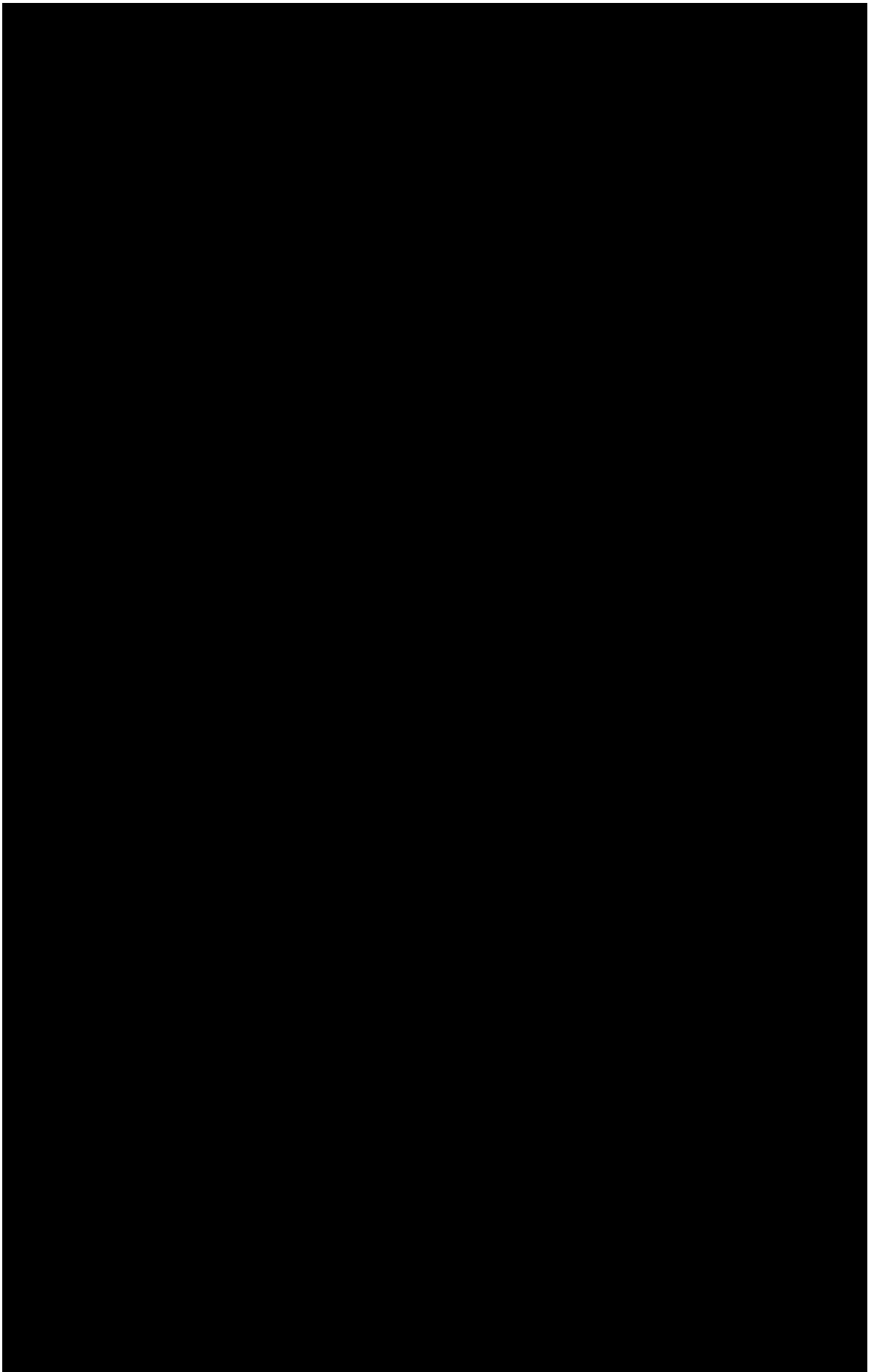
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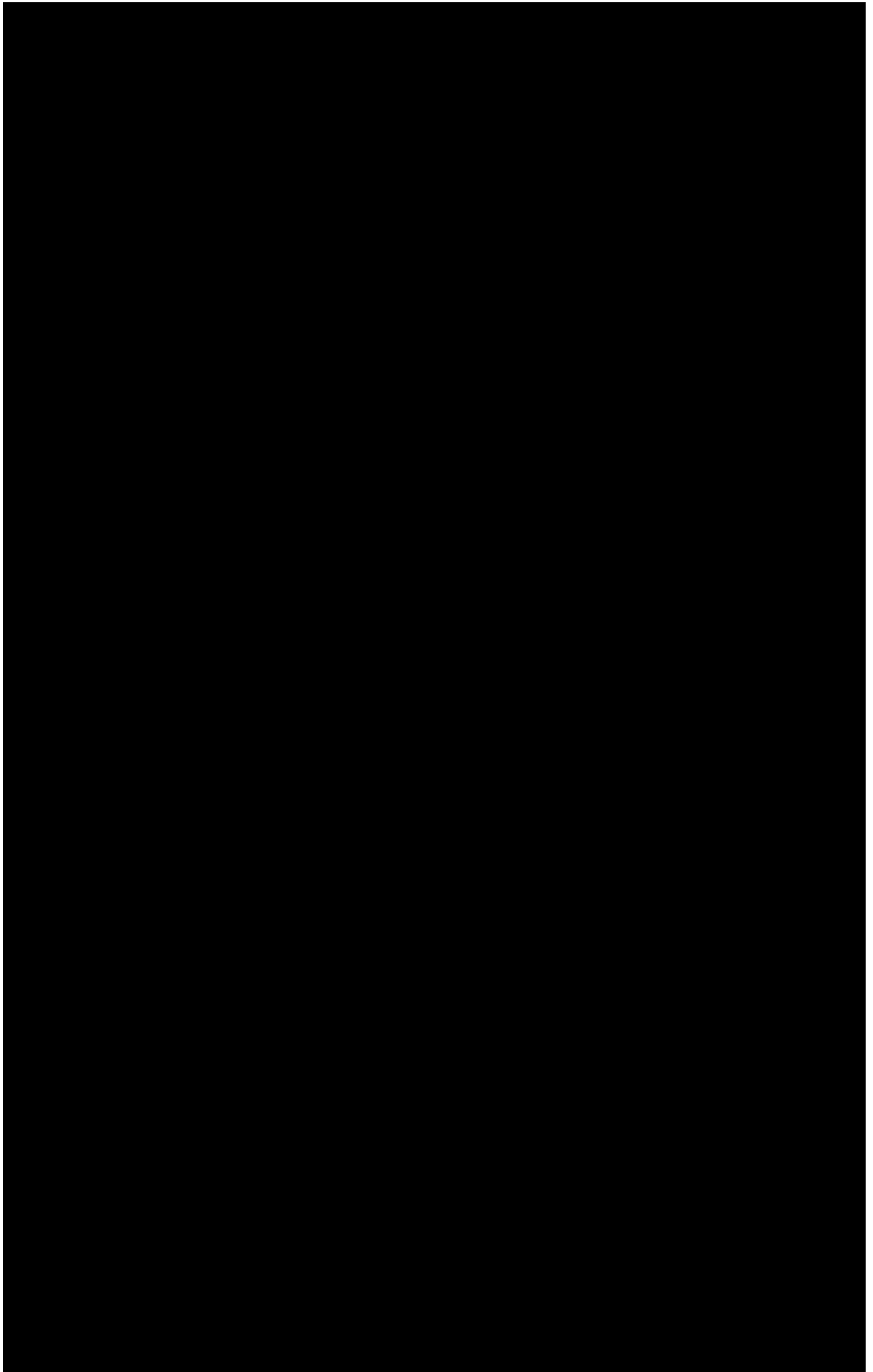
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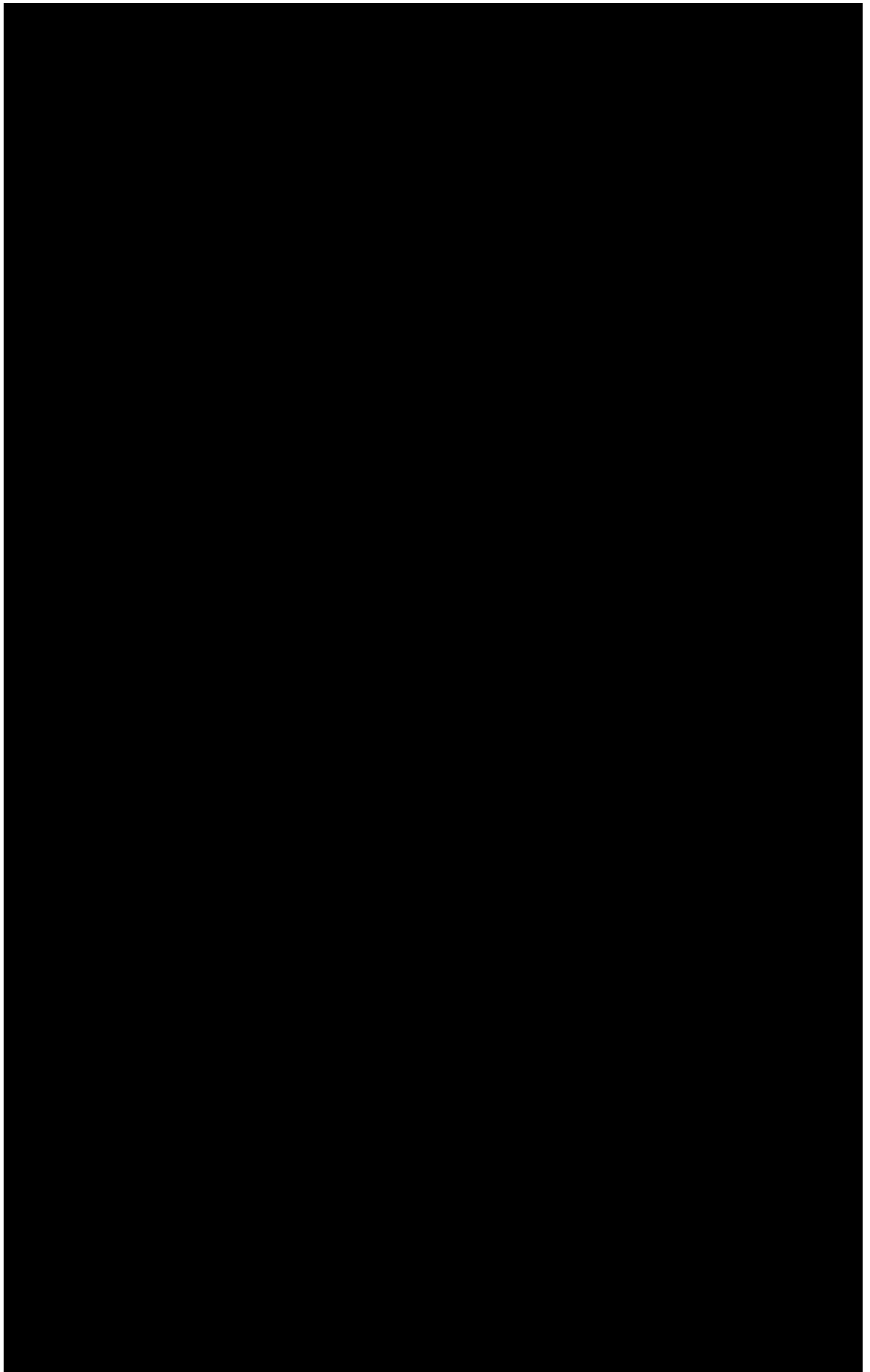
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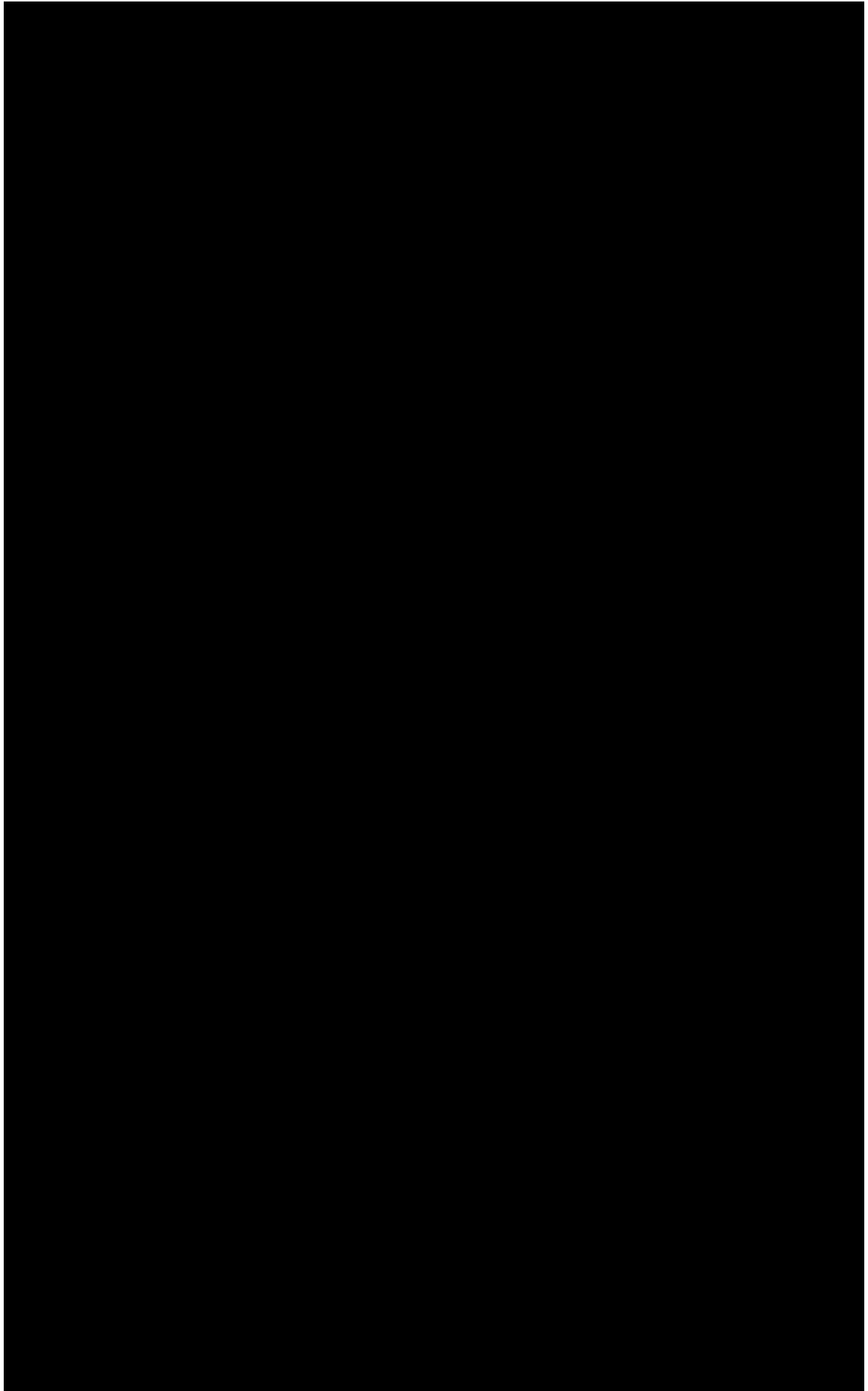
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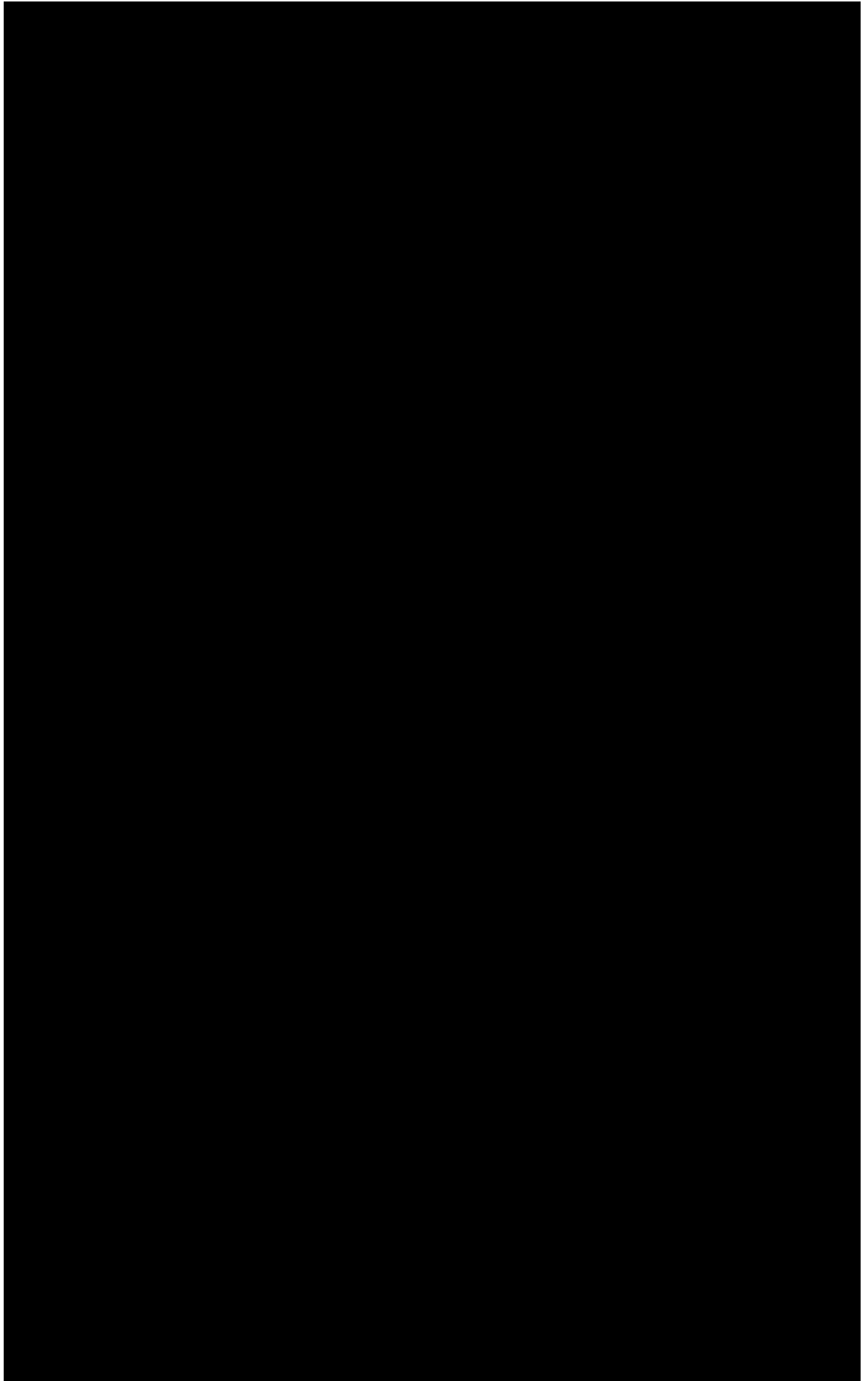
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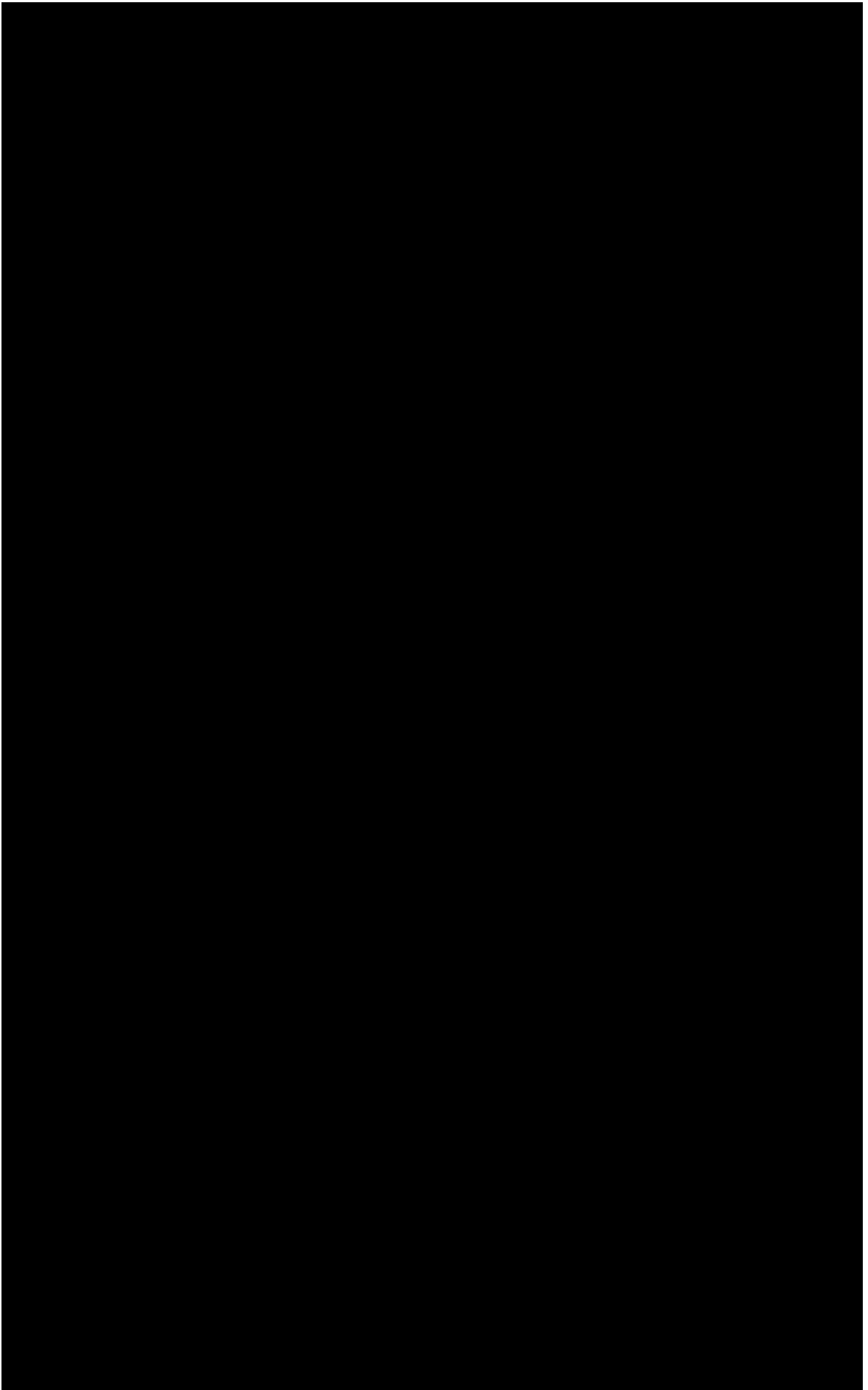
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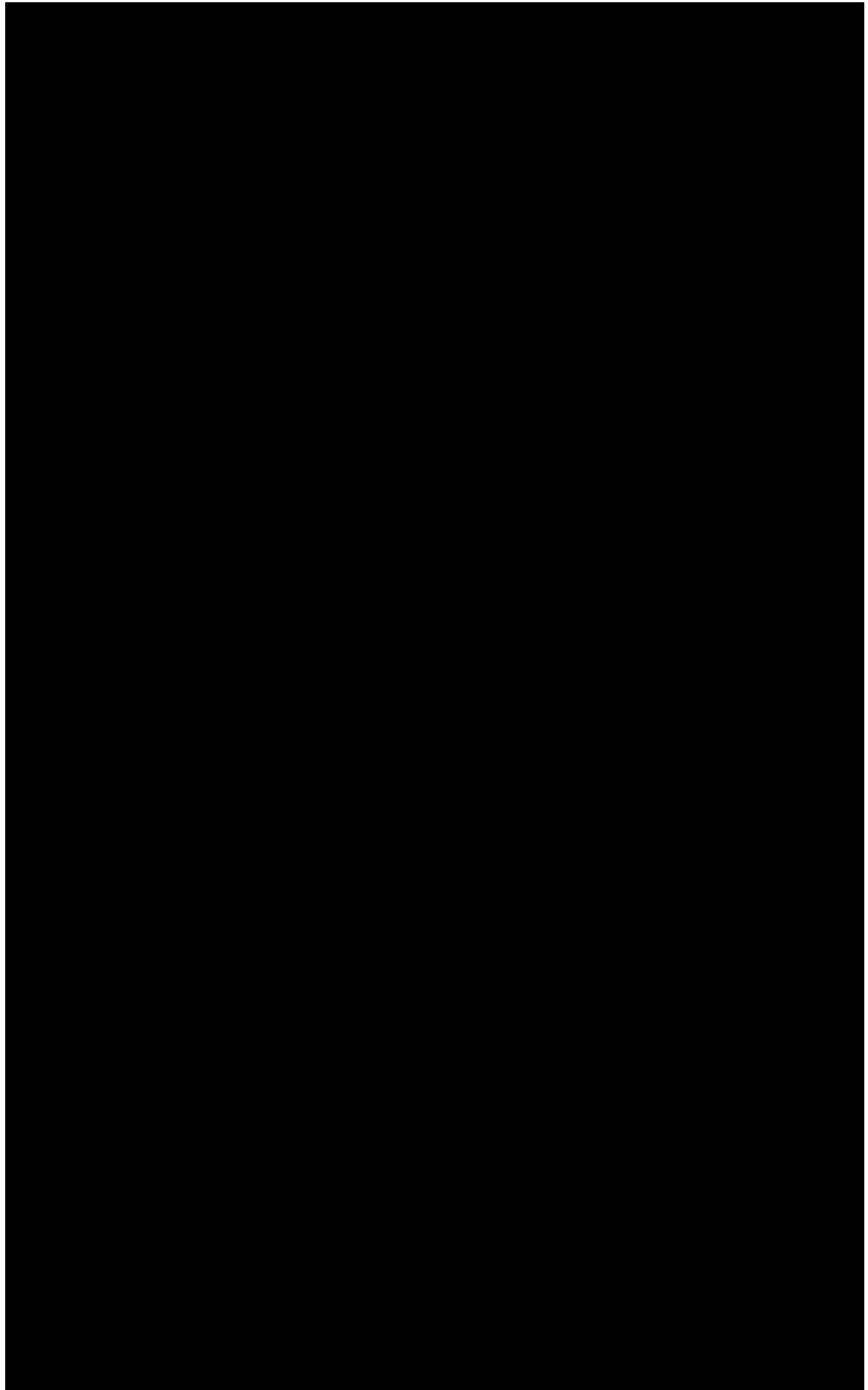
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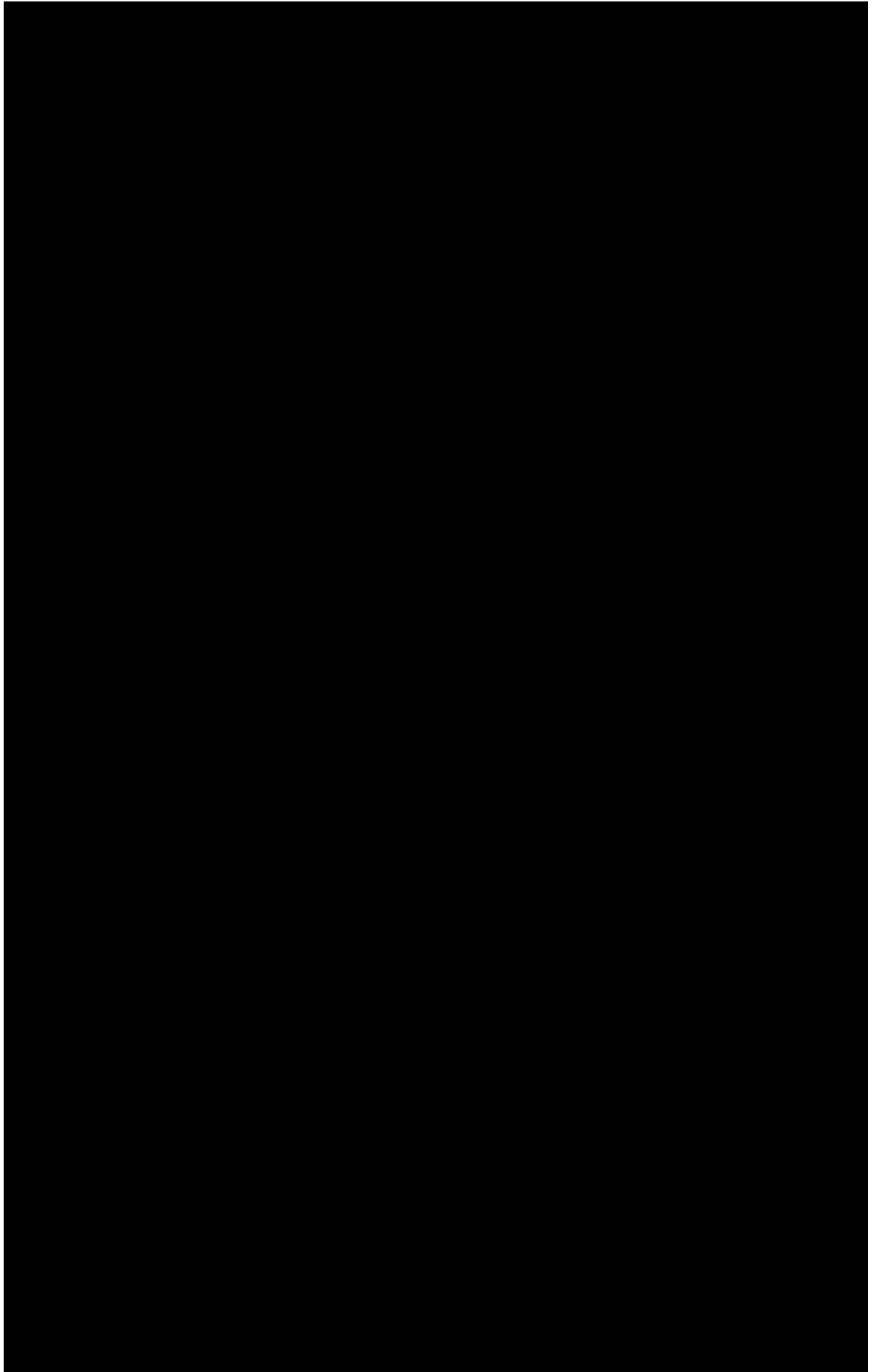
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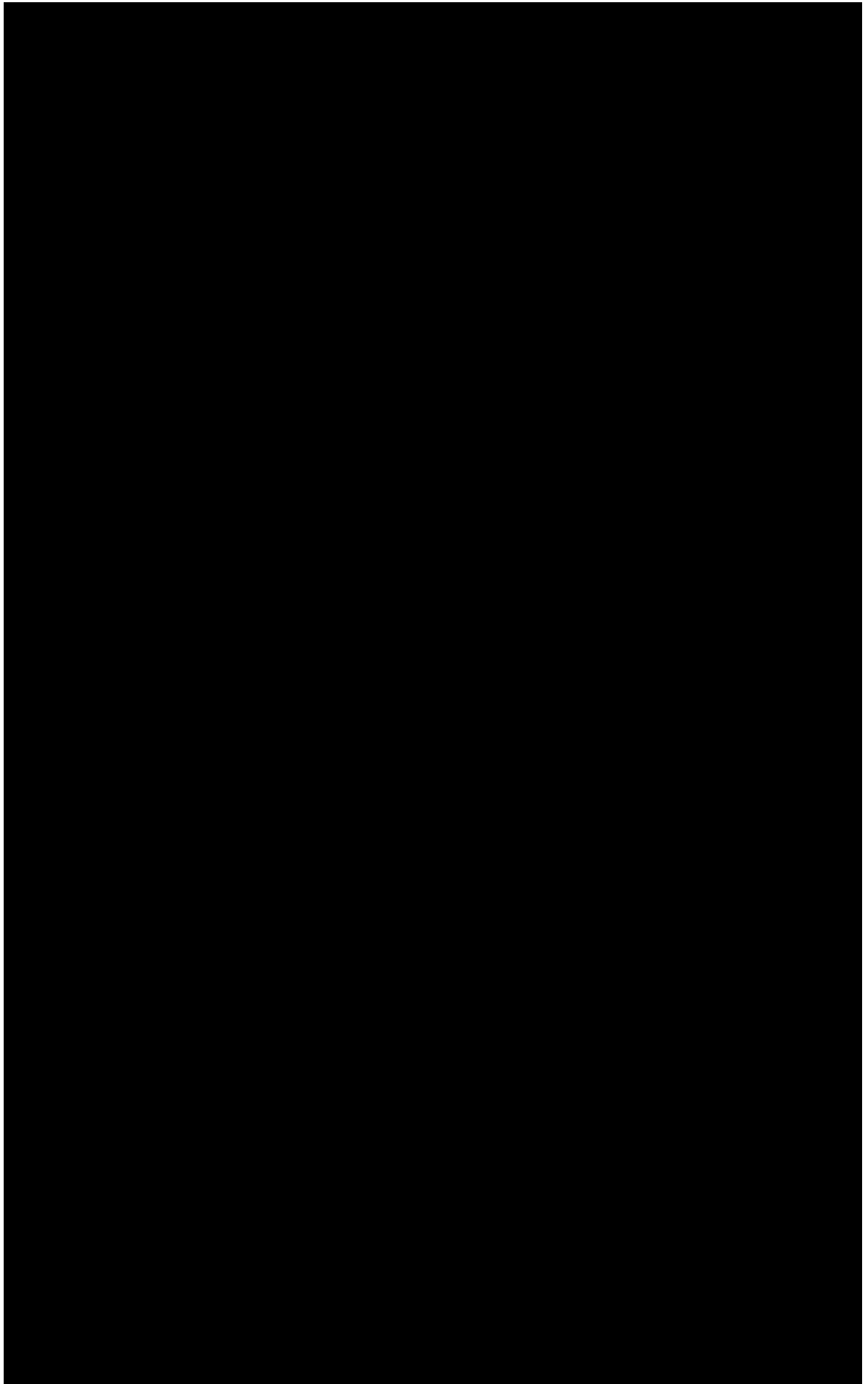
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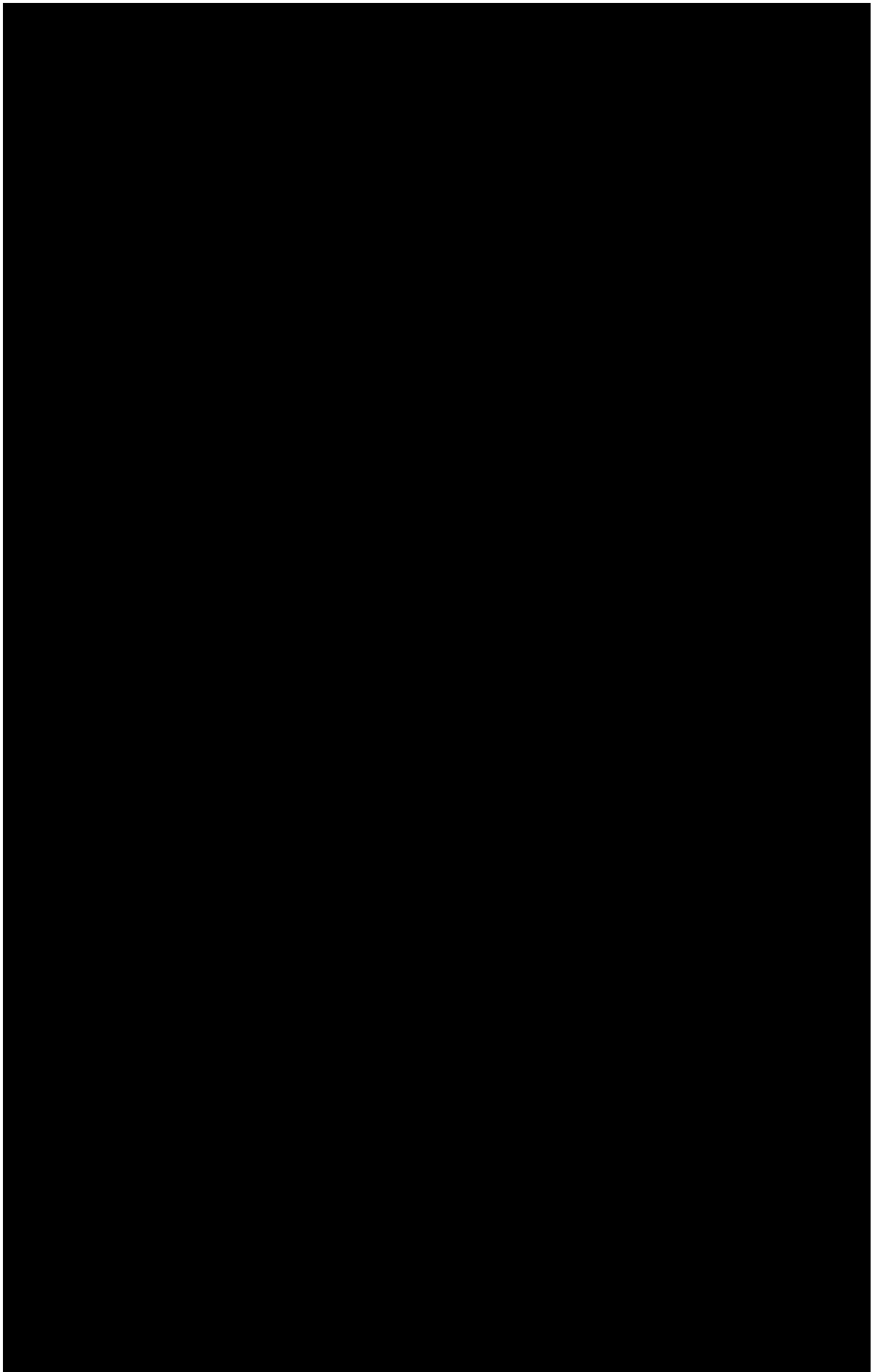
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MR. DeROCHE: Give me a moment to review my  
notes. I think I may be done.

6

THE VIDEOGRAPHER: Do you want to go off the  
record?

8

MR. DeROCHE: Let's go off the record, yeah.  
Sorry.

10

THE VIDEOGRAPHER: We're going off the record  
at 4:56.

12

(WHEREUPON, a recess was had

13

from 4:56 to 4:59 p.m.)

14

THE VIDEOGRAPHER: We're back on the record at  
4:59.

16

MR. DeROCHE: Mr. Nicastro, I have nothing  
further. Thank you for your time.

18

THE WITNESS: Thanks.

19

MR. DeROCHE: Off the record.

20

THE VIDEOGRAPHER: Going off the record at  
4:59.

22

(WHEREUPON, the following

23

proceedings were had off the video

24

record:)

1 THE REPORTER: Signature? Do you read and  
2 sign?

3 MR. HYNES: Yes.

4 (Time Noted: 4:59 p.m.)

5 FURTHER DEPONENT SAITH NAUGHT.

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I, CORINNE T. MARUT, C.S.R. No. 84-1968,  
Registered Professional Reporter and Certified  
Shorthand Reporter, do hereby certify:

3

That previous to the commencement of the  
examination of the witness, the witness was duly  
sworn to testify the whole truth concerning the  
matters herein;

5

That the foregoing deposition transcript  
was reported stenographically by me, was thereafter  
reduced to typewriting under my personal direction  
and constitutes a true record of the testimony  
given and the proceedings had;

8

That the said deposition was taken  
before me at the time and place specified;

9

That the reading and signing by the  
witness of the deposition transcript was agreed  
upon as stated herein;

10

That I am not a relative or employee or  
attorney or counsel, nor a relative or employee of  
such attorney or counsel for any of the parties  
hereto, nor interested directly or indirectly in  
the outcome of this action.

13

14

CORINNE T. MARUT, Certified Reporter

15

16

(The foregoing certification of this  
transcript does not apply to any  
reproduction of the same by any means, unless under  
the direct control and/or supervision of the  
certifying reporter.)

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1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over  
4 carefully and make any necessary corrections. You  
5 should state the reason in the appropriate space on  
6 the errata sheet for any corrections that are made.

7 After doing so, please sign the errata  
8 sheet and date it.

9 You are signing same subject to the  
10 changes you have noted on the errata sheet, which  
11 will be attached to your deposition.

12 It is imperative that you return the  
13 original errata sheet to the deposing attorney  
14 within thirty (30) days of receipt of the  
15 deposition transcript by you. If you fail to do  
16 so, the deposition transcript may be deemed to be  
17 accurate and may be used in court.

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4 PAGE LINE CHANGE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

----- )  
IN RE: NATIONAL ) MDL No. 2804  
PRESCRIPTION OPIATE )  
LITIGATION ) Case No.  
----- ) 1:17-MD-2804  
 )  
THIS DOCUMENT RELATES TO ) Hon. Dan A. Polster  
ALL CASES )  
----- )

ACKNOWLEDGMENT

I, MARK NICASTRO, the undersigned,  
being first duly sworn, on oath say that  
the testimony given at my deposition at the time  
and place aforesaid is the truth, the whole truth,  
and nothing but the truth, and that I have read the  
foregoing transcript consisting of Pages 1 to 331  
inclusive, and do subscribe and make oath that the  
same is a true, correct, and complete transcript of  
my deposition so given as aforesaid, and includes  
changes, if any, so made by me.

\_\_\_\_\_  
MARK NICASTRO

SUBSCRIBED AND SWORN TO before me  
this        day of        , A.D. 20 .

\_\_\_\_\_  
Notary Public

	LAWYER'S NOTES		
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